



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

September 28, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nathaniel White, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Timothy Hsu, MD
c/o Richard A. Finkel, Esq.
Richard A. Finkel, Esq. & Assoc., PLLC
136-B Cedarhurst Avenue, Suite 15
Cedarhurst, New York 11516

Timothy Hsu, MD
[REDACTED]

RE: In the Matter of Timothy Hsu, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 20-246) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board.

Six copies of all papers must also be sent to the attention of Judge Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

In the matter of

Timothy Hsu, MD
NYS license # 219460

Determination
and Order

CO-19-11-7278
BPMC-20-246

A notice of referral proceeding and statement of charges dated August 5, 2020 were served on Respondent Timothy Hsu, MD. The statement of charges alleged professional misconduct in violation of New York State Education Law (Ed.L) 6530. (Exhibit 1.) A hearing was held at offices of the New York State Department of Health on September 10, 2020, by videoconference.

Pursuant to Public Health Law (PHL) 230(10)(c), Paul J. Lambiase, Chair, Robert A. Dracker, MD, and Rose Berkun, MD, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. John Harris Terepka, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by Nathaniel White, Esq. Timothy Hsu, MD (the Respondent) was represented by Richard A. Finkel, Esq. After consideration of the entire record, the hearing committee issues this determination and order dismissing the charges as authorized by Ed.L 6530.

JURISDICTION

The Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(b)&(d). Pursuant to PHL 230(10)(p), a hearing on limited issues, or "direct referral proceeding," is authorized when a licensee is charged solely with a violation of Ed.L

6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Penalties which may be imposed are set forth at PHL 230-a. Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner: None
Petitioner exhibits: 1-7

Witnesses for the Respondent: Cynthia McClaskey, MD

[REDACTED]
Beth M. Hsu
Timothy Hsu, MD

Respondent exhibits: A, B, C, D, G, H, I, J (includes HH), K, L, M, N
(includes N-X&GG), Y, Z, AA, BB (includes BB-EE),
FF.

A transcript of the hearing was made.

FINDINGS OF FACT

1. Respondent Timothy Hsu, MD was authorized to practice medicine in New York State on October 10, 2000 under license number 219460. (Exhibit 3.)
2. On September 25, 2019, the Virginia Board of Medicine issued a disciplinary order reprimanding the Respondent and requiring him to ensure that [REDACTED] submit quarterly reports regarding the status of the Respondent's treatment for the next twelve months. (Exhibit 4.)

3. The Virginia Board's order was issued after an informal conference to inquire whether the Respondent may have violated certain laws and regulations governing the practice of medicine in Virginia. The Virginia Board adopted as a finding of fact and conclusion of law that on May 1, 2017 the Respondent violated Virginia Codes and regulations governing the practice of medicine by engaging in verbal and/or physical contact with a patient which may reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both, or romantic involvement with the patient. (Exhibit 4.)

HEARING COMMITTEE DETERMINATION

The Virginia Board found the Respondent, a psychiatrist, violated Virginia statutes and regulations governing the practice of medicine by engaging in verbal and physical contact with a 28 year-old female patient. The Respondent hugged and kissed the patient at the end of a final office visit on May 1, 2017. On May 5, 2017, upon learning that the patient had later complained about his conduct, the Respondent reported and disclosed the incident to the Virginia Board of Medicine. (Exhibit C.) The Virginia Board, after an informal conference with the Respondent, issued a reprimand which became a final order when the Respondent did not request a formal hearing to contest it. (Exhibit 4.)

The hearing committee agreed that the Virginia Board's order was based on conduct that, if committed in New York, would constitute misconduct pursuant to Ed.L 6530(44) (in the practice of psychiatry, any physical contact of a sexual nature between the licensee and patient). The Respondent argues that the Virginia Board did not find that contact of a sexual nature occurred. The hearing committee rejected this argument, noting that the Virginia Board determined he had engaged in unprofessional conduct defined by Virginia law as:

19. Engaging in sexual contact with a patient concurrent with and by virtue of the practitioner and patient relationship or otherwise engaging at any time during the course of the practitioner and patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive., Va. Code Ann. 54.1-2915(A)(19).

(Exhibit 4, Findings of Fact and Conclusions of Law, item 2.) The Respondent's suggestion that the manner in which this misconduct was subsequently reported to the National Practitioner Data Bank (Exhibit BB) in any way alters the substance of the Virginia Board determination is also rejected.

First specification: The hearing committee agreed that the Virginia Board's finding establishes that the Respondent violated Ed.L 6530(9)(b), which defines professional misconduct as:

9. (b) Having been found guilty of improper practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

Second specification: The hearing committee also agreed that the Virginia reprimand, which became a final order on October 28, 2019 upon the Respondent's failure to request a formal hearing, constituted disciplinary action and established that the Respondent violated Ed.L 6530(9)(d) which defines professional misconduct as:

9. (d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken... by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action... would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Petitioner recommended revocation of the Respondent's license because the charged involved a sexual boundary violation by a psychiatrist. The hearing committee noted that the Respondent promptly reported this isolated incident to the Virginia Board (Exhibit C); that he has consistently acknowledged the boundary violation he committed on

this one occasion; that he accepted the reprimand issued by the Virginia Board without pursuing the matter to a formal hearing that might have involved the patient; that he has engaged in a vigorous program of continuing medical education regarding boundary issues (Exhibit N); and that the Virginia Board concluded that he has complied with its directives and has closed this matter (Exhibit G). The hearing committee was particularly impressed that at no time, either in this or the Virginia Board proceedings, has the Respondent attempted to criticize or shift any responsibility to the patient for either the incident or for the disciplinary proceedings that he has been subjected to a result of her complaint.

The hearing committee agreed that no action against the Respondent's license is warranted. Education Law 6530 specifically provides that "the charges may be dismissed in the interest of justice." The hearing committee unanimously determined (3-0) that the charges should be dismissed for that reason.

ORDER

IT IS HEREBY ORDERED THAT:

The charges are dismissed.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

By:


Paul J. Lambiase, Chair

Robert A. Dracker, MD
Rose Berkun, MD,

9/22/2020

To: Nathaniel White, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Timothy Hsu, MD
c/o
Richard A. Finkel, Esq.
Richard A. Finkel, Esq. & Associates, PLLC
136-B Cedarhurst Avenue, Suite 15
Cedarhurst, New York 11516
and



APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

TIMOTHY HSU, M.D.

STATEMENT
OF
CHARGES

TIMOTHY HSU, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 10, 2000, by the issuance of license number 219460 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 25, 2019, a Special Conference Committee of the Virginia Board of Medicine issued a disciplinary Order that reprimanded the Respondent and required him to have his counselor submit quarterly reports to the Virginia Board of Medicine for a period of 12 months. The Order issued Findings of Fact and Conclusions of Law which concluded the Respondent, a psychiatrist, violated Virginia Code § 54.1-2915(A)(12), (18) and (19) and 18 Virginia Administrative Code 85-20-100(A)(1) and (2) when, during an office visit on May 1, 2017, he engaged in verbal and/or physical contact with a 28-year-old female patient which may be reasonably interpreted as, (i) intended for the sexual arousal or gratification of the practitioner, the patient, or both; or (ii) romantic involvement with the patient.

B. The conduct resulting in the Virginia disciplinary action against the Respondent would constitute misconduct under the laws of New York State pursuant to the following section of New York State law:

1. New York Education Law section 6530(44) (In the practice of psychiatry, any physical contact of a sexual nature between the licensee and patient).

SPECIFICATION OF CHARGES**FIRST SPECIFICATION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530[44]) as alleged in the facts of the following:

1. Paragraphs A and B.

SECOND SPECIFICATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530[44]) as alleged in the facts of the following:

2. Paragraphs A and B.

DATE: August 5, 2020
Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct