

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

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2010 OCT -8 AM 11:43

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs
v.
Rosalia Ramos Dominguez, M.D.,
Respondent

File No. 10-49-02682

Department of State

Docket No. 0976-49-10

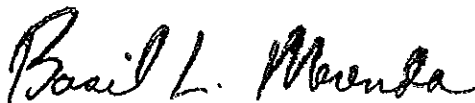
FINAL ORDER

AND NOW, this 8th day of October, 2010, noting that neither party filed an application for review and that the State Board of Medicine (Board) did not issue a Notice of Intent to Review, in accordance with 1 Pa. Code § 35.226(a)(3) and 49 Pa. Code § 16.57, the hearing examiner's adjudication and order dated September 10, 2010, appended to this order as **Appendix A**, is now the **FINAL ORDER** of the Board in this proceeding.

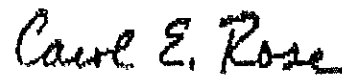
This order is retroactive to September 30, 2010, twenty days from the date of mailing of the Hearing Examiner's Adjudication and Order.

BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS

STATE BOARD OF MEDICINE



BASIL L. MERENDA
COMMISSIONER



CAROL E. ROSE, M.D.
CHAIRMAN

Respondent's Address:

Rosalia Ramos Dominguez, M.D.
P O Box 7274
McMinnville, TN 37111-7274

Prosecuting Attorney:

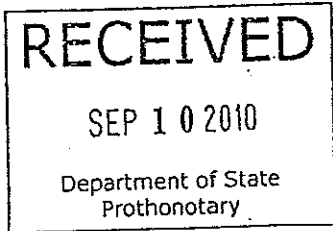
Jay E. Holstein, Esquire

Board counsel:

David M. Green, Esquire

Date of mailing:

October 8, 2010



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs :

v. :

Docket No. 0976-49-10
File No. 10-49-02682

Rosalia Ramos Dominguez, M.D., :
Respondent :

ADJUDICATION AND ORDER

Ruth D. Dunnewold
Hearing Examiner

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

APPENDIX A

DATE DISTRIBUTED 9/10/10
PROSECUTION _____
COUNSEL _____
HEARING EXAMINER _____
CLERK _____

HISTORY

This matter comes before a hearing examiner for the Department of State on a two-count order to show cause (OSC) filed May 26, 2010, in which the Commonwealth alleged that Rosalia Ramos Dominguez, M.D. (Respondent) is subject to disciplinary action under the Medical Practice Act¹ (Act) at § 41(4), 63 P.S. § 422.41(4), as a result of having disciplinary action taken against her by the Tennessee Board of Medical Examiners, as well as under the Medical Care Availability and Reduction of Error (Mcare) Act,² at § 903(2), 40 P.S. § 1303.903(2), by reason of her having failed to report the Tennessee Board action to the Pennsylvania State Board of Medicine (Board).

The Commonwealth served the OSC upon Respondent in a manner which met the requirements of § 33.31 of the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa. Code § 33.31. The OSC directed Respondent to file an Answer within 30 days of the date of the OSC, a period which expired without Respondent's ever filing an answer or otherwise responding to the allegations in the OSC.

On August 30, 2010, the Commonwealth filed a Motion for Entry of Default and to Deem Facts Admitted (MDFA). The MDFA was served upon Respondent at the same address at which service of the OSC was obtained. As of the date of this Adjudication and Order, Respondent has not filed an answer to either the OSC or the MDFA.

¹Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. § 422.1 – § 422.51a.

²Act of March 20, 2002, P.L. 154, No. 13, *as amended*, 40 P.S. § 1303.101 – § 1303.1115.

FINDINGS OF FACT

1. Respondent holds a license to practice medicine in the Commonwealth of Pennsylvania, license no. MD057363L, which was originally issued on September 21, 1995. Board records; OSC at paragraph 1.

2. Respondent's license is active through December 31, 2010, and may be renewed thereafter by the filing of the appropriate documentation and payment of the necessary fees. Board records; OSC at paragraph 2.

3. At all pertinent times, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. Board records; OSC at paragraph 3.

4. Respondent's last known address on file with the Commonwealth is P.O. Box 7274, McMinnville, TN 37111-7274. Board records.

5. On or about February 4, 2010, the State of Tennessee, Department of Health, Board of Medical Examiners (Tennessee Board) issued a Final Order *In the Matter of Rosalia Dominguez, M.D.*, Docket No. 17.18-104667A (Tennessee Board matter), finding Respondent in violation of TENN. CODE ANN. § 63-6-214(b)(18). OSC at attached Exhibit A.

6. In the Final Order, the Tennessee Board found that, while Respondent worked as a psychiatrist at Western Mental Health Institute, Respondent allegedly exhibited symptoms of cognitive impairment. OSC at paragraph 7 and attached Exhibit A.

7. The Tennessee Board found that Respondent engaged in the practice of medicine when mentally or physically unable to safely do so. OSC at paragraph 8 and attached Exhibit A.

8. The Tennessee Board suspended Respondent's license to practice medicine in the State of Tennessee until such time as a history and physical evaluation, including a neuropsychological assessment, can be reviewed. OSC at paragraph 9 and attached Exhibit A.

9. On May 26, 2010, the Commonwealth filed an OSC against Respondent, alleging that she is subject to discipline pursuant to the Act at § 41(4), 63 P.S. § 422.41(4), as a result of having disciplinary action taken against her by the Tennessee Board, as well as pursuant to the Mcare Act at § 903(2), 40 P.S. § 1303.903(2), which required her to report the Tennessee Board action to the Board. Docket No. 0976-49-10; MDFA at paragraph 4.

10. The Commonwealth served the OSC upon Respondent by mailing it using the United States Postal Service (USPS) to Respondent at her address on file with the Board, by certified mail, return receipt requested, and by first class, postage prepaid, addressed as follows:

Rosalia Ramos Dominguez
P.O. Box 7274
McMinnville, TN 37111

Docket No. 0976-49-10; MDFA at paragraph 5.

11. The OSC mailed to Respondent at that address by first class mail, postage prepaid, was not returned to the Commonwealth by the USPS. Docket No. 0976-49-10; MDFA at paragraph 6.

12. Respondent received the OSC mailed to her at her address on file with the Board by first class mail, postage prepaid, based upon the fact that it was not returned to the Commonwealth by the USPS. *Id.*

13. The OSC directed Respondent to file an Answer within 30 days of its date. Docket No. 0976-49-10; MDFA at paragraph 7.

14. More than 30 days from the date of the OSC have expired. Docket No. 0976-49-10; MDFA at paragraph 8.

15. As of the date of this decision, Respondent has not filed an Answer to the OSC. Docket No. 0976-49-10; MDFA at paragraph 9.

16. On August 30, 2010, the Commonwealth filed an MDFA in this matter and served it on Respondent at her address on file with the Board, by certified mail, return receipt requested, and by first class, postage prepaid, addressed as follows:

Rosalia Ramos Dominguez
P.O. Box 7274
McMinnville, TN 37111

Docket No. 0976-49-10.

17. As of the date of this decision, Respondent has not responded to the Commonwealth's MDFA. *Id.*

18. Respondent was served with the OSC and all subsequent pleadings, orders and notices filed of record in this matter. *Id.*

19. The factual allegations set forth in the OSC do not allege that Respondent failed to report the Tennessee Board's disciplinary action to the Board. *Id.*

20. There is no evidence in the record to indicate that Respondent failed to report the Tennessee Board's disciplinary action to the Board. *Id.*

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 1 – 3.
2. Respondent has been afforded reasonable notice of the charges against her and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. Findings of Fact 9 – 18.
3. Respondent is subject to discipline under § 41(4) of the Act, 63 P.S. § 422.41(4), in that Respondent's license to practice medicine has been disciplined by the proper licensing authority of another state, Tennessee. Findings of Fact 5 – 8.
4. There is insufficient evidence to demonstrate that Respondent violated 40 P.S. § 1301.903(2). Findings of Fact 19 – 20.

DISCUSSION

Service/Motion for Default

The Commonwealth successfully served the OSC on Respondent by first class mail, postage prepaid, at her current address on file with the Board. Since her license in the Commonwealth is also current, and because Respondent has an obligation to keep the Board informed of her current address, that is an appropriate address at which to have made service. Respondent received the OSC served at that address, as evidenced by the fact that the OSC served there by first class mail, postage prepaid, was not returned to the sender, so is presumed to have been delivered to and received by Respondent.

In the Notice attached to the OSC, Respondent was notified that the Commonwealth had instituted formal disciplinary action against her and that failure to respond to the OSC could result in a default judgment against her. Respondent was notified that she could lose her license to practice medicine and surgery in the Commonwealth. Respondent was directed to file an answer to the allegations in the OSC within 30 days, and was advised that if she did not file an answer to those allegations, disciplinary action could be taken against her without a hearing. Under a section captioned "Procedures" in the OSC, Respondent was ordered to file a written answer to the OSC within 30 days, and was advised that failure to do so would result in issuance of an order imposing a penalty against her license to practice medicine and surgery.

On August 30, 2010, the Commonwealth filed its MDFA due to Respondent's failure to file an answer to the OSC in the time specified. The MDFA was sent via first class mail, postage prepaid, to the same address at which the Commonwealth had successfully served the OSC. The MDFA has not been returned to the Commonwealth, an indicator permitting the presumption of

successful delivery of that pleading, as well.

As of the date of this adjudication, Respondent has filed neither an answer to the OSC nor a response to the MDFA. The procedural history set forth above satisfactorily demonstrates that Respondent has been afforded adequate notice of the charges, as well as an opportunity to be heard with regard to them. It is therefore proper now to enter a final order in this disciplinary proceeding without a hearing. *See Celane v. Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980).

Based upon her failure to respond to the OSC, Respondent is in default in accordance with the GRAPP at 1 Pa. Code § 35.37. That rule provides in pertinent part as follows:

§ 35.37. Answers to orders to show cause.

A person upon whom an order to show cause has been served...shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing....A respondent failing to file an answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.

Accordingly, under 1 Pa. Code §35.37, the Commonwealth's MDFA is granted and the allegations in the OSC are deemed admitted.

Violations

Count One of this action is brought under § 41(4) of the Act, 63 P.S. § 422.41(a)(4), which provides as follows:

§ 422.41. Reasons for refusal, revocation, or suspension of license

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken...by a proper

licensing authority of another state, territory or country, or a branch of the Federal Government.

* * *

Count One, if proven, subjects Respondent to disciplinary or corrective measures pursuant to § 41 of the Act, 63 P.S. § 422.41, *supra*, and in such an instance, the Board is authorized to impose any of the disciplinary or corrective measures outlined in the Act at § 42(a), 63 P.S. § 422.42(a), which provides as follows:

§ 422.42. Types of corrective action

(a) **Authorized actions.**--When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

- (1) Deny the application for a license, certificate or any other privilege granted by the board.
- (2) Administer a public reprimand with or without probation.
- (3) Revoke, suspend, limit or otherwise restrict a license or certificate.
- (4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
- (5) Require the board-regulated practitioner to take refresher educational courses.
- (6) Stay enforcement of any suspension, other than that imposed in accordance with section 40, and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.
- (7) Impose a monetary penalty in accordance with this act.

The Commonwealth charged in its OSC at Count One that the Tennessee Board disciplined Respondent's license in that state. The Commonwealth's evidence included the allegations in the OSC as well as Exhibit A attached to the OSC. Exhibit A consists of a copy of

the Final Order of the Tennessee Board *In the Matter of: Rosalia Dominguez, M.D.*, Docket No. 17.18-104667A, which suspended Respondent's license to practice medicine in the State of Tennessee until such time as a history and physical evaluation, including a neuropsychological assessment, can be reviewed.

Given that Respondent has been found in default and the allegations against her deemed admitted, the exhibit attached to the OSC and the corresponding factual allegations in Count One comprise the sum total of the evidence against her. That evidence shows that disciplinary action was taken against Respondent's license to practice medicine and surgery by the proper licensing authority of another state, Tennessee. Respondent did not file anything in opposition to the charge, nor did Respondent appear to challenge this action. The Commonwealth has therefore proven the allegations in Count One of the OSC by a preponderance of the evidence, subjecting Respondent's license to practice medicine and surgery in the Commonwealth to disciplinary action pursuant to the Act at §§ 42 and 41(4), 63 P.S. §§ 422.42 and 422.41(4), as set forth above.

Count Two of this action is brought pursuant to § 903(2) of the Mcare Act, 40 P.S. § 1303.903(2). The relevant portions of that provision state as follows:

§ 1303.903. Reporting

A physician shall report to the State Board of Medicine or the State Board of Osteopathic Medicine, as appropriate, within 60 days of the occurrence of any of the following:

* * *

(2) Information regarding disciplinary action taken against the physician by a health care licensing authority of another state.

* * *

Count Two, at paragraph 12, incorporates by reference the factual allegations set forth in paragraphs 1 through 10 but *adds no new facts*. Paragraph 13 adds no new factual allegations; it simply alleges the legal conclusion that the factual allegations in paragraphs 1 through 10 authorize the Board to discipline Respondent under 40 P.S. § 1301.903(2) because Respondent failed to report the Tennessee Board's action to the Board. Since paragraphs 1 through 10 contain no facts indicating, one way or the other, whether Respondent reported the discipline, there are no facts alleged in the record that may be deemed admitted in order to support the legal conclusion in paragraph 13. Accordingly, the Commonwealth failed to carry its burden on Count Two and it must be dismissed.

Sanction

The Board has a duty to protect the health and safety of the public. Under professional licensing statutes including the Act, the Board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. *Barran v. State Board of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied* 679 A.2d 230 (Pa. 1996). Although she has been given the opportunity, Respondent has chosen not to defend herself in the matter now before the Board.

When a state licensing board confers a professional license, it represents the opinion of the State that the license holder has met the enumerated qualifications for that license, in terms of education, experience, honesty, ability and integrity. *Khan v. State Board of Auctioneer Examiners*, 842 A.2d 936, 944 (Pa. 2004). It follows that, when a licensing board takes away a license, it represents the opinion of the State that the license holder is no longer qualified for the license due to a lack of education, experience, honesty; ability or integrity. Absent Respondent's

appearance or the presentation of any mitigating evidence in this case, the Board's duty to protect the public and regulate the profession is best carried out by recognizing both the seriousness of the action taken against Respondent's license in Tennessee and the presumption that the Tennessee action would not have occurred if Respondent had continued to meet Tennessee's standards for licensure.

The underlying basis for the Tennessee Board's action included findings that, while Respondent worked as a psychiatrist at Western Mental Health Institute, Respondent allegedly exhibited symptoms of cognitive impairment, and that Respondent engaged in the practice of medicine when mentally or physically unable to safely do so. These are very serious allegations, and the Tennessee Board, essentially, indefinitely suspended Respondent's license to practice, pending review of a history and physical evaluation, including a neuropsychological assessment. A suspension under such circumstances is generally a penalty reserved for the most questionable professional activity which presents a clear and immediate danger to the public health.

Under these circumstances, the Commonwealth's citizens deserve no less protection than the citizens of Tennessee. Moreover, in the absence of Respondent's appearance to present mitigating factors, there is no basis in the record for imposing any penalty less than indefinite suspension in Pennsylvania. Accordingly, based upon the above findings of fact, conclusions of law and discussion, and in the absence of mitigating evidence, the following order shall issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs :
v. : Docket No. 0976-49-10
: File No. 10-49-02682
: Rosalia Ramos Dominguez, M.D., :
Respondent :

ORDER

AND NOW, this 10th day of September, 2010, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that the license to practice medicine and surgery issued to Respondent, **Rosalia Ramos Dominguez, M.D.**, license no. MD057363L, is **INDEFINITELY SUSPENDED** until such time as her license to practice medicine in the State of Tennessee has been restored to active, unrestricted status.

Respondent shall refrain from practicing medicine and surgery in this Commonwealth, and shall return her licensure documents, including wall certificates and wallet card, no later than 30 days after the date this order is deposited in the mail. All licensure documents shall be forwarded to the following address:

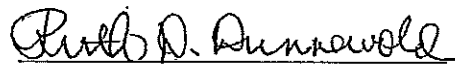
State Board of Medicine
Attn: Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

Upon the restoration of her Tennessee license to unrestricted status, Respondent shall be eligible to petition the Board for reinstatement of her license to practice medicine and surgery in the Commonwealth. Prior to reinstatement, Respondent must prove at a formal

hearing before the Board or its designee that her license in Tennessee has been restored to active, unrestricted status and that she is able to practice the profession with reasonable skill and safety to patients. Documentation of her ability to practice with reasonable skill and safety to patients shall include, but is not limited to, an evaluation and assessment from a treatment provider approved by the Professional Health Monitoring Program indicating that Respondent is fit to safely practice the profession. Respondent may obtain the names of Board-approved treatment providers by contacting the Professional Health Monitoring Program, P.O. Box 2649, Harrisburg, PA 17105-2649.

This order shall take effect 20 days from the date of mailing unless otherwise ordered by the State Board of Medicine.

BY ORDER:


Ruth D. Dunnewold
Hearing Examiner

For the Commonwealth:

Jay E. Holstein, Esquire
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 2649
Harrisburg, PA 17105-2649

For Respondent:

Rosalia Ramos Dominguez, M.D.
P.O. Box 7274
McMinnville, TN 37111-7274

Date of Mailing: September 10, 2010

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Final Order.