



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

July 25, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Danuta Barbara Fabisiak, D.O.
2110 58th Street West
Bradenton, Florida 34209

David W. Quist, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Danuta Barbara Fabisiak, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-172) 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:

Jean T. Carney, 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 Carney 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,



Sean D. O'Brien
Acting Chief Administrative Law Judge
Bureau of Adjudication

SDO: cmg
Enclosure

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

COPY

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IN THE MATTER :
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OF :
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DANUTA BARBARA FABISIAK, D.O. :
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DETERMINATION
AND
ORDER

BPMC-22-172

A Notice of Referral Proceeding and Statement of Charges dated April 27, 2022 (Exhibit 1), were duly served upon Danuta Barbara Fabisiak, D.O. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). A hearing was held on July 13, 2022, via WebEx videoconference. Pursuant to § 230(10)(e) of the PHL, **SAMUEL F. BOSCO, M.D.**, Chairperson, **PROSPERE REMY, M.D.** and **MYRA M. NATHAN, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. **NATALIE BORDEAUX** served as the administrative officer.

The Department appeared by David Quist, Associate Attorney. The Respondent appeared and testified on her own behalf. The Hearing Committee received and examined documents from the Department (Exhibits 1-5) and from the Respondent (Exhibit A.) A transcript of the proceeding was made. After consideration of the entire hearing record, the Hearing Committee hereby issues this Determination and Order. All findings, conclusions, and determinations are unanimous. The Hearing Committee determined to sustain the charge that the Respondent committed professional misconduct, in violation of Education Law § 6530(9)(d), and to impose the penalty of censure and reprimand.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Education Law § 6530(9). The Respondent is

charged with professional misconduct pursuant to Education Law § 6530(9)(d), by having disciplinary action taken against her license to practice medicine in Florida where the conduct resulting in the disciplinary action taken would, if committed in New York state, constitute professional misconduct under the laws of New York state. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York on November 24, 1998 under license number 212618. (Exhibit 3.)

2. On April 14, 2017, the Department of Health of the State of Florida filed an administrative complaint before the Board of Osteopathic Medicine of the State of Florida (Florida Board) charging the Respondent with failing to maintain records for a patient, including copies of prescriptions. (Exhibit 5.)

3. Effective August 24, 2021, the Florida Board issued a final order that approved, adopted, and incorporated the allegations set forth in the April 14, 2017 administrative complaint. Pursuant to that order, the Florida Board issued a letter of concern regarding the Respondent's license to practice osteopathic medicine and ordered her to complete two hours of continuing medical education in the area of medical records within 12 months from the effective date of the order. The Respondent was also ordered to pay an administrative fine of \$2500 and pay the costs associated with the case. (Exhibit 5.)

DISCUSSION

The Florida Board determined that the Respondent failed to maintain records for a patient, including copies of prescriptions. The Department's April 27, 2022 Statement of Charges alleges that the Respondent's misconduct in Florida described in the August 24, 2021 final order would, if

committed in New York, constitute professional misconduct as defined in Education Law § 6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient). (Exhibit 1.)

The Hearing Committee agreed that the Respondent's actions resulting in the Florida Board's disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(32). The Hearing Committee thus determined that the Respondent violated Education Law § 6530(9)(d).

After determining to sustain the charge, the Committee considered all possible penalties authorized by PHL § 230-a. The Department requested a censure and reprimand, along with a requirement that the Respondent provide a minimum of 90 days' notice to the Director of the Office of Professional Medical Conduct before she attempts to practice medicine in the state of New York, followed by three years of probation.

The Hearing Committee agreed that censure and reprimand was a necessary admonishment for the Respondent's failure to maintain a patient record. However, the Hearing Committee saw no need for the imposition of additional measures in a jurisdiction distinct from that in which the misconduct occurred and in which the Respondent has had no professional ties since June 2000. (Exhibit A.) The Hearing Committee noted that the Florida Board's order was based on one act involving one patient and that, despite that board's extensive investigation, it saw no need to institute more severe penalties upon the Respondent's ability to practice. The Committee was satisfied that the Florida Board's disciplinary action most adequately addressed the Respondent's behavior. For these reasons, the Hearing Committee concluded that the appropriate penalty in this case is censure and reprimand.

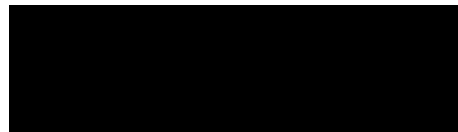
ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine in the state of New York is hereby subject to censure and reprimand under PHL § 230-a(1).
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: JULY 22, 2022

_____, New York



**Samuel F. Bosco, M.D.
Chairperson**

**Prospere Remy, M.D.
Myra M. Nathan, Ph.D.**

To: Danuta Barbara Fabisiak, D.O.
2110 58th Street West
Bradenton, FL 34209

David W. Quist, Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237

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

IN THE MATTER

OF

DANUTA BARBARA FABISIAK, D.O.

STATEMENT

OF

CHARGES

DANUTA BARBARA FABISIAK, D.O., the Respondent, was authorized to practice medicine in New York State on or about November 24, 1998, by the issuance of license number 212618 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 23, 2021, the Board of Osteopathic Medicine of the State of Florida ("Board") issued a Final Order, filed and effective on or about August 24, 2021. The case was initiated by an Administrative Complaint (case no. 2015-19554) dated on or about April 14, 2017 and filed on or about April 17, 2017.

B. Pursuant to the terms of the Final Order, the Board approved, adopted, and incorporated by reference the allegations set forth in the Administrative Complaint as its findings, concluding that Respondent violated section 459.015(1)(o) of the Florida Statutes (2009-2014). The Administrative Complaint alleged that Respondent failed to keep medical records for a particular patient. Pursuant to the Final Order, Respondent was issued a letter of concern, was required to complete continuing medical education in the area of medical records, required to pay an administrative fine in the amount of \$2,500, and required to pay costs.

C. The conduct resulting in the Board's Decision and Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York Education Law Section 6530(32) (failure to maintain a record).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having the Respondent's license to practice medicine revoked, suspended or having other disciplinary action taken, or having the Respondent's application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered the Respondent's 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(32)) as alleged in the facts of the following:

1. The facts in Paragraphs A through C.

DATE: April 27, 2022
Albany, New York


JEREMY J. CONKLIN
Acting Deputy Counsel
Bureau of Professional Medical Conduct