



**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

January 28, 2025

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Deborah Beth Medows, Esq.
New York State Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Darryl Smith, M.D.



RE: In the Matter of Darryl Smith, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 25-012) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

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 licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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 Ms. 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,

A solid black rectangular redaction box covering the signature of the Chief Administrative Law Judge.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

Darryl Smith, MD

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

COPY

**IN THE MATTER
OF
DARRYL SMITH, M.D.**

**Determination
and
Order**

BPMC-25-012

The New York State Department of Health, Bureau of Professional Medical Conduct (Department) served Darryl Smith, M.D. (Respondent) with a Notice of Hearing dated November 22, 2024, and Statement of Charges dated November 18, 2024, pursuant to Public Health Law (PHL) § 230(10)(d)(i). (Exhibit 1.) This hearing was held via Cisco WebEx videoconference on January 23, 2025. Pursuant to PHL § 230(10)(e), **JAMES EGNATCHIK, M.D.**, Chair, **ATUL GUPTA, M.D.**, and **GAIL HOMICK HERRLING**, duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee. **KATHLEEN DIX**, Administrative Law Judge (ALJ), served as the administrative officer.

The Department appeared by Deborah Beth Medows, Esq. The Respondent did not appear. The Department called April Soltren, Supervising Medical Conduct Investigator at the Office of Professional Medical Conduct's Physician Monitoring Program, as its sole witness. The Hearing Committee received and examined documents from the Department (Exhibits 1-4). A transcript of the proceeding was made.

The Department charged the Respondent with one specification of professional misconduct under New York Education Law (Educ. Law) § 6530(15), specifically: failure to comply with an order issued pursuant to PHL §§ 230(7)(a).

Upon consideration of the record in its entirety, the Hearing Committee

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determined to sustain the charge and suspend the Respondent's license, wholly, until the Respondent complies with the terms set forth in a January 26, 2024 order issued by a committee on professional conduct. All findings, conclusions, and determinations are unanimous.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in the State of New York on October 2, 2013, by the issuance of license number 272521 by the New York State Education Department. (Exhibit 1.)

2. Pursuant to § 230(7)(a) of the Public Health Law, a committee on professional conduct found reason to believe that the Respondent may be impaired by alcohol, drugs, physical disability or mental disability. After affording the Respondent an opportunity to be heard, the committee directed the Respondent, by order dated January 26, 2024, mailed by certified mail, return receipt requested, with a cover letter dated February 22, 2024, which letter set forth an effective date for the Order of February 29, 2024, to submit to and cooperate with an examination by Dr. [REDACTED] and [REDACTED], no later than thirty days from the date of the order, and that the Respondent's failure to comply completely shall be professional misconduct (January 26, 2024 Order). The Department sent the January 26, 2024 Order to the Respondent via USPS certified mail – return receipt requested on February 27, 2024, and by Federal Express First Overnight on February 26, 2024. (Exhibit 2; Testimony Soltren.)

3. The Respondent failed to submit to the comprehensive medical examination by March 30, 2024, and has not submitted to such examination on any subsequent date.

DISCUSSION

Although duly notified of the date, time, and place of this hearing, the Respondent failed to appear, either in person or by representative. After due diligence and certified under oath, the Department was unable to personally serve the Respondent with the Notice of Hearing and Statement of Charges. On December 3, 2024, a process server attempted to hand-deliver the Notice of Hearing and Statement of Charges to the Respondent at his last known address in [REDACTED] but the process server was informed that the Respondent did not live there. On December 13, 20 and 23, 2024, a process server attempted to hand-deliver the Notice of Hearing and Statement of Charges to the Respondent at three alternative addresses identified by public record to be associated with the Respondent in [REDACTED]. At two of the addresses, the process server was informed that the Respondent was not known or was not listed at that address. A third address identified was found not to exist.

After being unable to effectuate personal service of the hearing documents, pursuant to PHL § 230(10)(d), the Department served the Notice of Hearing and Statement of Charges upon the Respondent by certified mail to eight (8) addresses which, after investigation, were deemed to be the last known business and/or personal addresses associated with the Respondent. (Exhibit 4). The Department also attempted to contact the Respondent by telephone at ten (10) separate phone numbers which, after investigation, were deemed to be phone numbers associated with the Respondent. No contact was made with the Respondent nor did the Respondent return calls where messages were left. The Department additionally attempted to contact the Respondent by emailing him at the email address found upon investigation, to wit:

[REDACTED] The email communication did not bounce back as

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undeliverable, nor did the Respondent respond to any emails sent.

CONCLUSIONS

As required by PHL § 230(10)(f), the Hearing Committee based its conclusions on whether the Department met its burden of establishing the allegations contained in the Statement of Charges by a preponderance of the evidence. When the evidence was equally balanced or left the Hearing Committee in such doubt as to be unable to decide a controversy either way, then the judgment went against the Department. (See Prince, Richardson on Evidence § 3-206 [Farrell 11th ed].)

The Department's counsel appeared at the hearing, summarized the charges and detailed the attempts that were undertaken to serve the Respondent with the Notice of Hearing and Statement of Charges herein. Based upon the representations by the Department's counsel, and the affidavits submitted, the Department attempted personal service upon the Respondent of the Notice of Hearing dated November 22, 2024, and Statement of Charges dated November 18, 2024, which service was unsuccessful. (Exhibits 1, 3.) Ultimately, service was effectuated by certified mail, as permitted by PHL § 230(10)(d). The Respondent is deemed to have had sufficient notice of this hearing and the charges against him. The Respondent did not appear at the hearing.

PENALTY DETERMINATION

In determining an appropriate penalty, the Hearing Committee considered the full spectrum of penalties available pursuant to PHL § 230-a, including revocation, suspension, probation, censure and reprimand, and the imposition of a monetary penalty. The Hearing Committee agreed with the Department's recommendation that the Respondent's license to practice medicine be suspended, wholly, until the Respondent complies with the January 26, 2024 Order to submit to an examination as

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directed by the Board. While the Hearing Committee considered the Respondent's absence from these proceedings problematic, the Department's presentation suggested that the Respondent, at some future date, may be able to rehabilitate himself and return to practice. The determined penalty protects the public while leaving a path available for the Respondent to practice medicine, should he desire to do so, after proving his fitness and compliance with all requirements.

ORDER

IT IS HEREBY ORDERED THAT:

1. The first specification of charges as set forth in the Statement of Charges is sustained.
2. Pursuant to PHL § 230-a(2)(e), the Respondent's license to practice medicine in the state of New York is suspended, wholly, until such time as the Respondent complies with the January 26, 2024 Order to submit to an examination as directed by the Board.
3. This Determination and Order shall be effective upon service of the Respondent in accordance with PHL § 230(10)(h).

DATED:

January 27, 2025
Buffalo, New York


JAMES EGNATCHIK, M.D., Chair
ATUL GUPTA, M.D.
GAIL HOMICK HERRLING

Darryl Smith, MD

To: Deborah Beth Medows, Esq.
New York State Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Darryl Smith, M.D.

EXHIBIT "A"

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

IN THE MATTER
OF
DARRYL SMITH, M.D.

STATEMENT
OF
CHARGES

Darryl Smith, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 2, 2013, by the issuance of license number 272521 by the New York State Education Department.


FACTUAL ALLEGATIONS

A. On or about January 26, 2024, the New York State Board for Professional Medical Conduct, after reviewing information, found reason to believe that Respondent may be impaired by alcohol, drugs, physical disability or mental disability. As a result, the Board issued an Order, effective February 29, 2024, which pursuant to section 230 (7) (a) of the Public Health Law, directed Respondent to:

- a. Submit to and cooperate with an examination by Dr. [REDACTED]
[REDACTED], to be
commenced no later than thirty days from the date the Order is signed.

B. Respondent has violated the Board Order:

a. By failing to commence the scheduled examination with Dr.

. To date, Respondent has not commenced the mandated examination.

SPECIFICATIONS OF CHARGES

FIRST SPECIFICATION

FAILURE TO COMPLY WITH AN ORDER

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law § 6530 (15) by failing to comply with an order, as alleged in the facts of the following:

1. Paragraphs A and B and their subparagraphs.

DATE: November 18, 2024
New York, New York


Henry Weintraub
Chief Counsel
Bureau of Professional Medical Conduct