

Doe v Department of Health

2008 NY Slip Op 30756(U)

March 18, 2008

Supreme Court, Albany County

Docket Number: 0098492/0071

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

JOHN DOE, M.D.

Petitioner,

-against-

DECISION and ORDER

Index No.: 9849-07

RJI No.: 01-07-ST8364

DEPARTMENT OF HEALTH, STATE BOARD OF
PROFESSIONAL MEDICAL CONDUCT

Respondent.

Supreme Court of Albany All Purpose Term, January 25, 2008
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J

Petitioner, by petition, seeks an order pursuant to Public Health Law §230-c(4)(a), Public Health Law §230-c(5), CPLR §7805, and CPLR Article 63, staying the Determination and Order

("D&O") of the Hearing Committee ("Committee") of Respondent, and enjoining Respondent from enforcing and publicizing the D&O. Respondent opposes the petition.

Petitioner (anonymous status), a medical doctor licensed to practice medicine in the State of New York, was charged with medical misconduct under the Education Law of the State of New York via a Notice of Hearing and Statement of Charges dated May 10, 2007. The Committee held a hearing from June 22, 2007 to August 28, 2007, ultimately finding Petitioner guilty of misconduct. The D&O, dated December 6, 2007, included a penalty ordering a two-year suspension of Petitioner's license. Only the first thirty days of the penalty was effective; the remainder was stayed.

Following submissions by Petitioner, this Court granted a Temporary Restraining Order, dated December 17, 2007, staying the license suspension and enjoining the Respondent from publishing the D&O. Petitioner then brought this action to permanently stay the license suspension pending review by the Administrative Review Board. Petitioner claims that, as the only OB-GYN in his medical practice, the penalty will cause irreparable harm to his patients and his reputation. Additionally, Petitioner has posted non-anonymous comments on a website concerning the D&O.

Public Health Law §230-c(4)(a) provides that "[a]ny penalty imposed by the order of the committee on professional medical conduct, other than a penalty of annulment, suspension without stay or revocation, is stayed by the service of the notice of review upon the administrative review board and remains stayed until the review board renders its determination." Further, Public Health Law §230(10)(g) provides that "[t]he committee's findings, conclusions, determinations and order shall become public upon issuance in any case in which annulment,

suspension without stay or revocation of the licensee's license is ordered.”

After a full review of the record, this Court declares that the D&O is stayed, that the Respondent is enjoined from enforcing the D&O, and that the Petitioner has waived anonymous status.

Here, the Committee's D&O includes a two-year suspension, with only thirty days effective. Thus, the penalty was a suspension with a partial stay. Public Health Law does not define the term “suspension without stay,” and no case law has directly addressed this issue. However, it is notable that the statute contains the general term “suspension without stay,” rather than one of the more specific terms sought by Respondent, such as “actual suspension” or “suspension with partial stay.” Further, a suspension with full stay, by its nature, is already stayed without need for the automatic stay provision. Thus, Respondent's interpretation that only a “suspension with full” stay triggers the automatic stay provision actually renders the provision meaningless.

Consequently, a fair reading of Public Health Law §230-c(4)(a) is that a partially stayed suspension is not a “suspension without stay,” and thus qualifies for the automatic staying provision. For that reason, the partial suspension of Petitioner's license is stayed, and the Respondent is enjoined from enforcing the penalty, pending review by the Administrative Review Board. However, as Petitioner has compromised his anonymity by making non-anonymous posts on the internet concerning the D&O, Petitioner has waived anonymous status.

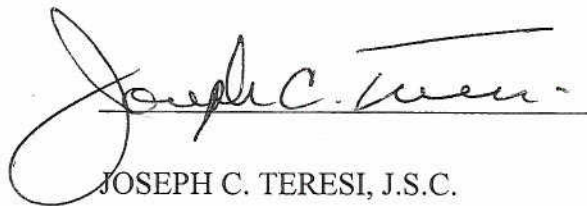
All papers, including this Decision and Order, are being returned to the attorney for Petitioner. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel are not relieved from the applicable provisions of that section respecting

filing, entry and notice of entry.

So ordered.

Dated: March 18, 2008

Albany, NY



JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Petition, dated December 17, 2007, with attached Affidavit, of Michael Paul Ringwood, Esq., dated December 17, 2007, with Attached Exhibits A-I
2. Verified Answer, of Richard Lombardo, Esq., dated January 18, 2008.
3. Affidavit, of Timothy J. Mahar, Esq., dated January 18, 2008, with Attached Exhibits A-F.
4. Reply Affidavit, of Michael Paul Ringwood, Esq., dated January 22, 2008, with Attached Exhibits J-K.