

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
BOARD OF MEDICAL LICENSURE AND DISCIPLINE
THREE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:

Steve Tu, D.O.
License Number D.O. 00602

No. C08-023

DECISION

I. INTRODUCTION

The above-entitled matter came for a hearing before a hearing committee¹ of the Board of Medical Licensure and Discipline (“Board”) pursuant to a Time and Notice of Hearing (“Notice”) and a Specification of Charges (“Charges”) issued by the Board to Stephen Tu (“Respondent”) on or about November 13, 2008. Pursuant to R.I. Gen. Laws § 5-37-1 *et seq.*, Respondent is licensed (“License”) to practice medicine in the State of Rhode Island. The hearing was held on December 9, 2008. At hearing, the Respondent did not appear. The Board was represented by Bruce McIntyre, Esquire.

Prior to the hearing, the Respondent had not contacted the Board, the Board’s counsel, or the undersigned. Pursuant to Section Fourteen (14) of the *Rules and Regulations for the Licensure and Discipline of Physicians* (“Board Regulation”) all hearings shall be held in accordance with the *Rules and Regulations of the Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health* (“Hearing Regulation”). Pursuant to

¹ On November 21, 2008, pursuant to R.I. Gen. Laws § 5-37-5.2, David Gifford, M.D., Director of the Department of Health designated three (3) members of the Board of Medical Licensure and Discipline to act as a hearing panel for the purposes of adjudicating this matter. Two (2) members of the hearing panel were present at the hearing.

Section 5.6 of the Hearing Regulation, service may be made by hand-delivery or first class mail and service is complete upon mailing, even if unclaimed or returned, when sent to the last known address of the party.

In this matter, testimony (as discussed below) demonstrates that the Board forwarded the Notice and Charges to Respondent's last known address on record with the Board. The Board forwarded the Notice and Charges to Respondent's Connecticut business address but they were returned to the Board. See Board's Exhibit Four (4). The Board also forwarded the Notice and Charges to Respondent's home address in Rhode Island.² In addition, the Board hand-delivered the Notice and Charges to Respondent's home address. It is the Respondent's responsibility to apprise the Board of any change in address. See Board's Exhibit Eight (8). As the Respondent was properly notified of the time and date of the hearing, the hearing went forward.

II. JURISDICTION

The Board has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-37-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, the Board Regulation, and the Hearing Regulation.

III. ISSUE

Whether the Respondent engaged in unprofessional conduct pursuant to R.I. Gen. Laws § 5-37-5.1 and if so, what is the appropriate sanction.

IV. MATERIAL FACTS AND TESTIMONY

Linda Julian ("Julian"), Complaint Investigator, testified on behalf of the Board. She testified that the Notice and Charges were sent to the Respondent's most recent address on record with the Department which was his business address in Connecticut.

² The Board confirmed the Respondent's use of his Rhode Island home address with its regulatory counterpart in Connecticut. See Board's Exhibit Five (5).

She testified that the Notice and Charges were returned to the Board. See Board Exhibit Four (4). She testified that she confirmed with the Board's regulatory counterpart in Connecticut that the address used by Respondent in Connecticut was a Rhode Island home address. See Board's Exhibit Five (5). She testified that she forwarded the Notice and Charges by first class mail to Respondent's Rhode Island home address. She testified that on December 1, 2008, she also hand-delivered the Notice and Charges to the Respondent's home address by taping them to the front door. She testified that she went to Respondent's house the next day and the documents were no longer taped to the front door. See Board Exhibit Three (3).

Julian testified that the Board received a complaint from Kathleen Krikorian ("Krikorian"). See Board Exhibit Eleven (11) (complaint dated May 28, 2008). She testified that she forwarded the complaint to the Respondent and that he did not respond to the complaint. See Board Exhibit Nine (9). She testified that since the Respondent did not respond to the complaint, the Board initiated the administrative hearing process. She testified that she forwarded a subpoena issued by the Board to the Respondent on September 3, 2008 commanding him to appear on September 16, 2008 before the Board's Investigating Committee. See Board's Exhibit Ten (10). She testified that the Respondent did not appear before the Board on September 16, 2008.

Kathleen Krikorian ("Krikorian") testified on behalf of the Board. She testified she went to the Respondent's lasik surgery center for lasik surgery in May 2007 and paid \$2,600 up front for the surgery and for a year of follow-up care. She testified that the Respondent did not perform the surgery but rather another doctor performed the surgery. She testified that three (3) months after her surgery, it was determined that she required

“enhancement” surgery. She testified that she arranged an appointment for that surgery but the Respondent cancelled the surgery. She testified that she tried to reschedule the surgery but was unable to. She testified that she offered to go to Respondent’s Connecticut office but the Respondent would not schedule the surgery there. She testified that the Respondent stopped returning her calls and she left approximately six (6) voice mail messages for him that were not returned. She testified she had to see another physician to perform her “enhancement” surgery and spend more money. She testified that when she read a newspaper article about the Respondent, she realized there was an issue and forwarded her complaint to the Board.

The Respondent’s License to practice medicine was issued by the Board as a conditional license. See Board’s Exhibit Fourteen (14). The Board and Respondent entered into a consent order on May 14, 2008. See Board’s Exhibit Fifteen (15). The Board indicated that these proceedings were only based on the Krikorian complaint and did not arise out of the consent order.

V. DISCUSSION

In closing, the Board argued that the Respondent had engaged in unprofessional conduct because he abandoned his patient and failed to respond to the Board.

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words

of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Relevant Statutes and Regulation

R.I. Gen. Laws § 5-37-5.1 provides in part as follows:

Unprofessional conduct. – The term "unprofessional conduct" as used in this chapter includes, but is not limited to, the following items or any combination of these items and may be further defined by regulations established by the board with the prior approval of the director:

(4) Abandoning a patient;

(23) Failing to furnish the board, its chief administrative officer, investigator or representatives, information legally requested by the board.

Pursuant to R.I. Gen. Laws § 5-37-6.3 and R.I. Gen. Laws § 5-37-6.2, the director of the Department of Health at the direction of the Board may revoke a physician's license if the Board finds that a physician has engaged in unprofessional conduct.

C. Whether the Respondent violated R.I. Gen. Laws § 5-37-5.1(4) and (23)

Respondent cancelled Krikorian's follow-up appointment for surgery. He then failed to respond to Krikorian's telephone calls and did not arrange an alternative date for

the surgery. Because of Respondent's failure to fulfill his obligations to his patient, Krikorian was forced to incur further expenses for surgery when the Respondent had already accepted payment for such follow-up surgery. By engaging in such acts, the Respondent abandoned his patient and violated R.I. Gen. Laws § 5-37-5.1(4).

On May 28, 2008, Krikorian filed a complaint with the Board. The Board forwarded this complaint to the Respondent requesting that the Respondent reply to the complaint. The Respondent failed to reply to complaint. Pursuant to R.I. Gen. Laws § 5-37-6, the Board subpoenaed the Respondent to appear before the Investigating Committee to answer the complaint. The Respondent did not appear before the Board as required by the subpoena. By failing to respond to the complaint and to the Board's subpoena, the Respondent failed to furnish the Board with legally required information and violated R.I. Gen. Laws § 5-37-5.1(23).

D. Sanction

A medical licensee has statutory and regulatory responsibilities to his or her patients. In this matter, the Respondent failed in his responsibilities to his patient forcing her to seek care elsewhere. He failed to perform surgery for which he already had been paid and caused his patient to incur further expenses. The Respondent failed in his professional obligations to the Board by failing to respond to the complaint and failing to respond to the Board's subpoena.

Furthermore, the Respondent had already been conditionally licensed in 2005 and had signed a consent order in 2008 regarding patient care. Shortly after signing the consent order, the Respondent abdicated his responsibility to a patient. He then ignored

the Board when the Board sought to investigate his patient's complaint. Such acts by a licensee of this Board are unprofessional and unacceptable.

Based on the forgoing, the appropriate sanction is to revoke the Respondent's License.

VI. FINDING OF FACTS

1. The Respondent received a conditional license to practice medicine on August 5, 2005.
2. The Respondent entered into a consent order with the Board on May 14, 2008.
3. In May, 2007, Krikorian entered into an agreement and paid the Respondent for lasik eye surgery and for follow-up care for one (1) year.
4. In May, 2007, Krikorian had lasik eye surgery at Respondent's surgery center.
5. Three (3) months later, Krikorian scheduled an appointment with Respondent for follow-up "enhancement" surgery.
6. Respondent cancelled the enhancement surgery appointment. He did not return Krikorian's telephone calls regarding rescheduling the appointment. He did not reschedule the surgery appointment or provide any type of alternative care for his patient.
7. On May 28, 2008, Krikorian filed a complaint with the Board regarding Respondent.
8. The Board forwarded the complaint to Respondent and requested that he respond to it. The Respondent failed to respond.

9. On September 3, 2008, the Board issued on subpoena to the Respondent commanding him to appear at a hearing before an Investigating Committee of the Board. The Respondent did not appear at the scheduled hearing.

10. The Respondent was properly notified of the hearing in this matter and failed to appear.

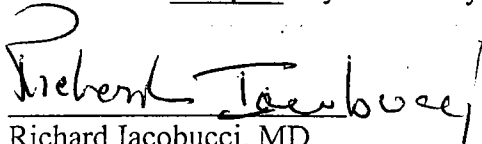
11. The facts contained in Section IV and V are reincorporated by reference herein.

VII. ORDER

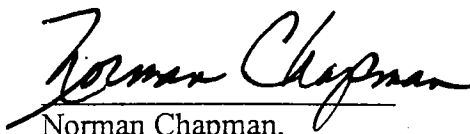
Based on the forgoing, the Board hereby orders the following:

Pursuant to the Specification of Charges and based on the findings and conclusions set forth herein, the Respondent's medical License is hereby revoked.

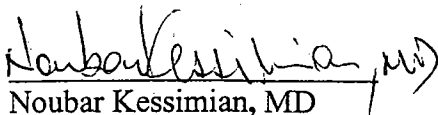
Entered this 14th day of January, 2009.


Richard Iacobucci, MD

Board Member


Norman Chapman,

Public Member of the Board

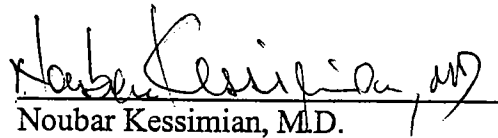

Noubar Kessimian, MD

Board Member

Ratified and approved by the Director of the Department of Health


David Gifford, M.D. MPH

Noubar Kessimian, M.D. hereby represents that he read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as his own.


Noubar Kessimian, M.D.

NOTICE OF APPELLATE RIGHTS

PURSUANT TO R.I. GEN. LAWS § 5-37-7, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT WITHIN THIRTY (30) DAYS AFTER THE DECISION OF THE DIRECTOR BY SERVING THE DIRECTOR WITH A NOTICE OF APPEAL AND FILING SUCH NOTICE IN SUPERIOR COURT. APPEALS ARE GOVERNED BY THE ADMINISTRATIVE PROCEDURES ACT, R.I. GEN. LAWS § 42-35-1 *et seq.*

CERTIFICATION

I hereby certify on this 1/16/11 day of January, 2009 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid, and certified mail to the Respondent's business address in Connecticut and Rhode Island home address on file with the Board and by hand-delivery to Respondent's home address in Rhode Island on file with the Board and by hand-delivery to Bruce McIntyre, Esquire, Department of Health, Three Capitol Hill, Room 204, Providence, RI 02908.

