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**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
STATE BOARD OF MEDICINE**

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

v.

**George Robert Schwartz, M.D.,  
Respondent**

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**Docket No. 1928-49-06  
File No. 06-49-04178**

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**ADJUDICATION AND ORDER**

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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

## HISTORY

This matter comes before a hearing examiner for the Department of State on a two-count order to show cause (OSC) filed November 13, 2006, in which the Commonwealth alleged that George Robert Schwartz, M.D. (Respondent) is subject to disciplinary action under the Medical Practice Act (Act), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. § 422.1 - § 422.51a, as a result of having disciplinary action taken against him by the New Mexico Medical Board and his not reporting it to the State Board of Medicine (Board) as required under the Mcare Act, Act of March 20, 2002, P.L. 154, No. 13, 40 P.S. § 1303.101 - § 1303.5108 (Mcare Act).

The Commonwealth served the OSC upon Respondent by mailing one copy via certified mail, return receipt requested, on November 14, 2006, and another copy via first class mail, postage prepaid, on December 22, 2006, to Respondent at the following address: P.O. Box 1968, Sante Fe, New Mexico 87504, which is his address of record with the Board.

Respondent received the OSC, as evidenced by the fact that the first class mailing was not returned. Service of the OSC upon Respondent in such a manner accorded with 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 thereto within thirty days of its date, which expired on December 13, 2006. Respondent did not answer or otherwise respond to the allegations in the OSC.

On September 24, 2007, the Commonwealth filed a Motion to Enter Default and Deem Facts Admitted (MDFA). The MDFA was served upon Respondent on September 24, 2007, by first class mail, postage prepaid, at P.O. Box 1968, Santa Fe, New Mexico 87504, still his address of record with the Board. As of the date of this Adjudication and Order, Respondent has

not filed an answer to either the OSC or the MDFA.

## FINDINGS OF FACT

1. Respondent holds a license to practice medicine in the Commonwealth of Pennsylvania, license no. MD013798E. Board records; OSC at paragraph 1.
2. Respondent's license was active through December 31, 2004, and may be renewed at any time by filing the appropriate documentation and paying the required fees. Board records; OSC at paragraph 2.
3. At all times pertinent to the factual allegations, Respondent held a license to practice medicine 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 1968, Santa Fe, New Mexico 87504. Board records; OSC at paragraph 4.
5. Effective April 7, 2006, the New Mexico Medical Board revoked Respondent's license to practice medicine for gross negligence; unprofessional or dishonorable conduct in failing to maintain timely, accurate and complete medical records; injudicious prescribing, administering or dispensing any drug or medicine; use of false, fraudulent or deceptive statements in any document connected with the practice of medicine; dishonesty; and conduct unbecoming in a person licensed to prescribe medicine. OSC at paragraph 6; Exhibit 1 attached to the OSC.
6. On November 13, 2006, the Commonwealth filed an OSC to initiate disciplinary action against Respondent's license to practice medicine in the Commonwealth, based upon the disciplinary action imposed upon Respondent by the New Mexico Medical Board. Docket No. 1928-49-06; MDFA at paragraph 1.

7. On November 14, 2006 and December 22, 2006, the Commonwealth served Respondent with the OSC by certified mail, return receipt requested, and by first class mail, postage prepaid, respectively. Docket No. 1928-49-06; MDFA at paragraph 2.
8. Respondent received the OSC, as evidenced by the fact that the OSC mailed first class mail, postage prepaid, was not returned. Docket No. 1928-49-06; MDFA at paragraph 3.
9. The OSC directed Respondent to file an Answer within thirty (30) days of its date. Docket No. 1928-49-06; MDFA at paragraph 4.
10. Thirty (30) days from the date of the OSC expired on December 13, 2006. Docket No. 1928-49-06; MDFA at paragraph 5.
11. Thirty days from December 22, 2006, the date the OSC was served by first class mail, postage prepaid, expired on January 21, 2007. Docket No. 1928-49-06.
12. Respondent has not filed an Answer to the OSC or requested a hearing. Docket No. 1928-49-06.
13. On September 24, 2007, the Commonwealth filed an MDFA in this matter and served it in the same manner and at the same address as the OSC. Docket No. 1928-49-06.
14. Respondent did not respond to the Commonwealth's MDFA. Docket No. 1928-49-06.
15. Respondent was served with the OSC and all subsequent pleadings, orders and notices filed of record in this matter. Docket No. 1928-49-06.
16. The factual allegations set forth in the OSC do not allege that Respondent failed to report the New Mexico Medical Board's disciplinary action to the Board.
17. There is no evidence in the record to indicate that Respondent failed to report the New Mexico Medical Board's disciplinary action to the Board.

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 him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. Finding of Fact 6 – 15.
3. Respondent is subject to discipline under section 41(4) of the Act, 63 P.S. § 422.41(a)(4), in that Respondent has had his license to practice medicine disciplined by the proper licensing authority of another state. Finding of Fact 5.
4. There is insufficient evidence to demonstrate that Respondent violated 40 P.S. § 1301.903(2). Findings of Fact 16 – 17.

## DISCUSSION

### Service/Motion for Default

The OSC was initially served on Respondent by certified mail, return receipt requested, and first class mail, postage prepaid, on November 14, 2006 and December 22, 2006, respectively, at Respondent's address of record on file with the Board. Respondent received the OSC sent by first class mail, as evidenced by the fact that the mail was not returned to the Legal Office.

In the Notice attached to the OSC, Respondent was notified that the Commonwealth had instituted formal disciplinary action against him and that failure to respond to the OSC could result in a default judgment against him. Respondent was notified that he could lose his 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 advised that if he did not file an answer to those allegations, disciplinary action could be taken against him 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 advised that failure to do so would result in issuance of an order imposing a penalty against his license to practice medicine and surgery.

On September 24, 2007, the Commonwealth filed its MDFA due to Respondent's failure to file an answer in the time specified. The MDFA, like the OSC, was sent via first class mail, postage prepaid, to Respondent's address of record with the Board. The MDFA has not been returned to the Legal Office.

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 the charges. It is therefore proper now to proceed 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 his 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.

**Sanction**

This action is brought under section 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.

The Commonwealth charged in its OSC at Count One that on or about April 7, 2006, the New Mexico Medical Board revoked Respondent's license to practice medicine for gross negligence; unprofessional or dishonorable conduct in failing to maintain timely, accurate and



complete medical records; injudicious prescribing, administering or dispensing any drug or medicine; use of false, fraudulent or deceptive statements in any document within the practice of medicine; dishonesty; and conduct unbecoming a person licensed to prescribe medicine. The Commonwealth's evidence as to Count One of the OSC, attached to the OSC as Exhibit 1, consists of certified copies of documents from the official record of the New Mexico Medical Board. Given that Respondent has been found in default, that exhibit, and the corresponding allegations, are deemed admitted. The evidence shows that disciplinary action was taken against Respondent's license to practice medicine and surgery by the proper licensing authority of another state. The Commonwealth has therefore proven Count One of its 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 63 P.S. § 422.41(a)(4).

Count Two incorporates by reference the factual allegations set forth in paragraphs 1 through 7 but *adds no new facts*. Paragraph 10 adds no new factual allegations; it simply alleges the legal conclusion that the factual allegations in paragraphs 1 through 7 authorize the Board to discipline Respondent under 40 P.S. § 1301.903(2) because Respondent failed to report the New Mexico action to the Board. Since paragraphs 1 through 7 contain no facts indicating, one way or the other, whether Respondent reported the discipline, there are no facts in the record to support the legal conclusion in paragraph 10. Accordingly, the Commonwealth failed to carry its burden on Count Two.

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 he has been given ample opportunity, Respondent has chosen not to defend himself in the matter now before the Board. Absent Respondent's appearance or mitigating evidence in this case, the Board's duty is best carried out by recognizing the seriousness of the action taken against Respondent's license in New Mexico and imposing a disciplinary sanction against Respondent's license to practice medicine and surgery in Pennsylvania consistent with the New Mexico action.

Accordingly, based upon the above findings of fact, conclusions of law and discussion, and in the absence of mitigating evidence, the following order will issue:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania, :  
Bureau of Professional and :  
Occupational Affairs :  
v. : Docket No. 1928-49-06  
George Robert Schwartz, M.D., : File No. 06-49-04178  
Respondent :

ORDER

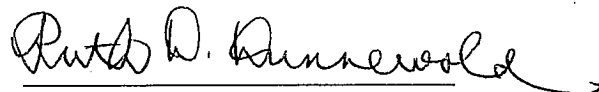
AND NOW, this 5<sup>th</sup> day of October, 2007, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that the license to practice medicine and surgery issued to Respondent, **George Robert Schwartz, M.D.**, license no. MD013798E, is **REVOKED**.

Respondent shall refrain from practicing medicine and surgery in this Commonwealth, and shall return his 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

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

***Respondent:***

George Robert Schwartz, M.D.  
P.O. Box 1968  
Santa Fe, NM 87504

***For the Commonwealth:***

Sean Patrick Quinlan, Prosecuting Attorney  
Commonwealth of Pennsylvania  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
Department of State  
P.O. Box 2649  
Harrisburg, PA 17105-2649

***Date of Mailing:*** 10-5-07

## NOTICE

### REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

A party may file an application to the hearing examiner for rehearing or reconsideration **within 15 days of the mailing date** of this adjudication and order. The application must be captioned "*Application for Rehearing*", "*Application for Reconsideration*", or "*Application for Rehearing or Reconsideration*". It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

### APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party **within 20 days of the date of mailing** of this adjudication and order. The application must be captioned "*Application for Review*". It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application to the hearing examiner for rehearing or reconsideration is filed.

### STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of the hearing examiner's order, the party must file an application for stay directed to the Board.

### FILING AND SERVICE

An original and three (3) copies of all applications shall be filed with:

Kelly I. Diller, Prothonotary  
P.O. Box 2649  
Harrisburg, PA 17105-2649

A copy of all applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative. The filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.