

January 12, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Raymond Gruenther, M.D.



Raymond Gruenther, M.D.



James E. Hacker, Esq.
Hacker, Murphy, LLP
7 Airport Park Boulevard
Latham, New York 12110

Jude Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Raymond Gruenther, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-004) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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:

James F. Horan, Esq., Chief 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 Mr. Horan 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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER
OF
RAYMOND GRUENTHER, M.D.

DETERMINATION

AND

ORDER

BPMC #15-004

A hearing was held on November 19, 2014, at the offices of the New York State Department of Health, 150 Broadway, Albany, New York. The State Board of Professional Medical Conduct served Respondent, **RAYMOND GRUENTHER, M.D.**, with the Notice of Referral Proceeding and Statement of Charges, both dated August 7, 2014. Pursuant to Section 230(10)(e) of the Public Health Law, Chairperson, **JACQUELINE H. GROGAN, Ed.D.**, **JOSEPH S. BALER, M.D.**, and **JAMES M. LEONARDO, M.D., Ph.D.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **KIMBERLY A. O'BRIEN ESQ.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **JAMES DERING ESQ.**, General Counsel, by **JUDE MULVEY ESQ.**, of Counsel. The Respondent **RAYMOND GRUENTHER, M.D.** appeared in person and was represented by **JAMES E. HACKER, ESQ.** Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Raymond Gruenther, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits or transcript page numbers, denoted by the prefix "Ex." or "Tr." These citations refer to evidence found persuasive by the Hearing Committee ("Committee") in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Raymond Gruenther, M.D., the Respondent, was authorized to practice medicine in New York State on October 3, 1983, by the issuance of license number 155891 by the New York State Education Department (Ex. 3).

2. On or about December 12, 2012, the State Medical Board of Ohio ("Ohio Board") issued a Notice of Opportunity for Hearing alleging that among other things Respondent failed "to maintain minimal standards applicable to the selection or administration of drugs" (Ex. 4).

3. In lieu of more formal proceedings, Respondent entered into an August 14, 2013 consent agreement with the Ohio Board ("Ohio consent agreement") wherein Respondent's license to practice medicine was suspended for one year and a subsequent three year probation, he was required to complete Continuing Medical Education ("CME") in the area of prescribing controlled substance and medical records keeping, and to provide a copy of the Ohio consent agreement to the licensing authorities in each state where Respondent held a license (Ex. 4; Tr. 19-23).

4. Effective August 14, 2014, Respondent's license to practice medicine in State of Ohio was reinstated. Respondent is subject to a three year period of probation and his practice will be overseen by an approved monitoring physician who shall monitor and review Respondent's practice plan and controlled substances log, and issue and forward quarterly reports to the Board; and Respondent is required to provide a copy of the consent agreement to all employers and entities he contracts with to provide health services and hospitals where he applies for privileges or receives training and shall provide proof that a copy of the consent agreement was transmitted to the appropriate person or entity (Ex. 4).

5. Respondent has been in full compliance with the terms of the Ohio consent agreement (Ex. D, G, I, K-O; Tr.19-26).

6. Respondent has not actively practiced medicine in New York since 1983 and does not intend to return to practice medicine here (Ex. 3; Tr. 23-24).

HEARING COMMITTEE DETERMINATION

The Department presented documentary evidence that in 2013 Respondent entered into a consent agreement with the Ohio Board. The Department argued that Respondent is guilty of misconduct in that if the conduct occurred in New York State it would constitute negligence on more than one occasion and failure to maintain a patient record, and that the Committee should impose the penalty of a censure and reprimand on Respondent to formally acknowledge Respondent's misconduct.

Respondent appeared at the hearing and testified on his own behalf. He acknowledged that he has learned a lot from the mandated CME training. Respondent's Ohio license was suspended for one year and he testified that it had a significant emotional and financial impact on him and his family but he remained in Ohio during this time (Tr. 23). He testified that his home and family are in Ohio and he has no intention of returning to New York to practice medicine (FOF 1, 3, 5). At the time of the hearing, Respondent's Ohio license had been reinstated and he was compliant with the terms of probation (FOF 5). Respondent expressed concern about the possible repercussions of the Committee sustaining the charge against him including that he could be put at risk of losing his board certification and his Medicaid and Medicare authorizations (Tr. 26-28).

The Committee took note that the terms of the Ohio consent agreement are quite stringent and the record supports that Respondent is in compliance with the terms of the agreement. Respondent travelled from Ohio to appear in person at the hearing. The Committee believes that he is truly remorseful. Clearly Respondent has no intention of returning to New York to practice medicine in that he has not practiced here in more than thirty years and despite the fact that

Respondent's Ohio license was suspended for one year he remained in Ohio. The Department argued that Respondent is guilty of misconduct, but it requested that the Committee impose the "minimal" penalty of a Censure and Reprimand for the purpose of formally acknowledging Respondent's misconduct. The Committee concluded that Respondent's misconduct has already been formally acknowledged by the Ohio consent agreement. The Ohio Board has required Respondent to submit to a one year suspension of his license to practice medicine, successfully complete intensive CME, and be subject to a three year probationary period where Respondent is required to work with an approved practice monitor. The Committee noted that under the terms of the Ohio consent agreement the Ohio Board is empowered to take further action against Respondent's Ohio license in the unlikely event that Respondent does not comply with the terms of his ongoing probation.

While the Committee concluded that the conduct of the Respondent as set forth in the Statement of Charges would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, sustaining the charge and imposing the requested penalty on Respondent would add no additional protection to the people of the State of New York and could likely have unwarranted repercussions on Respondent. Based on the foregoing, the Committee determined that the charge shall be dismissed in the interest of justice

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of misconduct in the Statement of Charges (Appendix 1) is **DISMISSED** in the interest of justice; and

2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: _____, New York,

J.M.-G
_____, 2015

JACQUELINE H. Grogan, Ed.D, Chair
JOSEPH S. Baler, M.D.
JAMES M. LEONARDO, M.D., Ph.D.

To: Raymond Gruenther, M.D.

Raymond Gruenther, M.D.

James E. Hacker, Esq.
HACKER MURPHY, LLP
7 Airport Park Blvd.
Latham, New York 12110

Jude Mulvey, Esq.
Bureau of Professional Medical Conduct
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Appendix 1

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

IN THE MATTER
OF
RAYMOND GRUENTHER, M.D.
CO-13-09-5191A

NOTICE OF
REFERRAL
PROCEEDING

TO: Raymond Gruenther, M.D.

Raymond Gruenther, M.D.

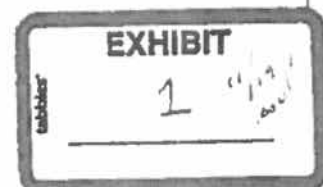
Raymond Gruenther, M.D.

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 15th day of October, 2014, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.


You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.



If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, whose name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide, at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here 

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

AUGUST 7, 2014


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER
OF
RAYMOND GRUENTHER, M.D.
CO-13-09-5191A

STATEMENT
OF
CHARGES

RAYMOND GRUENTHER, M.D., Respondent, was authorized to practice medicine in New York State on October 3, 1983, by the issuance of license number 155891 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 12, 2012, the State Medical Board of Ohio ("Ohio Medical Board") issued a Notice of Opportunity for Hearing ("Ohio Notice") to Respondent, alleging, among others, that Respondent's care of ten (10) patients constituted a departure from minimally acceptable standards of care and/or that he failed to maintain minimal acceptable standards in the selection or administrative of drugs, or failed to consider other treatment modalities. The allegations stemmed from, among others, Respondent's failure to timely refer patients for pain management, failure to provide treatment modalities other than prescriptions for narcotic medication, failure to adequately respond to signs of addiction, improper prescribing of oxycodone, failure to act in response to diversion of medication, and/or failure to document such concerns or referrals.

B. On or about August 14, 2013, the Ohio Medical Board indefinitely suspended Respondent's license to practice medicine for a minimum of one (1) year after Respondent entered into a Consent Agreement ("Ohio Consent Agreement") with the Ohio Medical Board in lieu of further formal proceedings. Additional terms of the Ohio Consent Agreement require Respondent to appear before the Ohio Board for an interview every six months, demonstrate that he can practice according to prevailing standards of care, take Continuing Medical Education courses in Controlled Substance Prescribing and Medical Records, and he is required to provide a copy of the Ohio Consent Agreement to the licensing authorities in each state where Respondent holds professional degrees.

C. The conduct resulting in the Ohio Consent Agreement against Respondent would constitute misconduct under the laws of New York State pursuant to the following sections of New York State law:

1. New York Education Law § 6530 (3) (negligence on more than one occasion);
2. New York Education Law § 6530 (32) (failure to maintain adequate records).

SPECIFICATION

Respondent violated Education Law §6530 (9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, after a disciplinary action was instituted by a duly authorized disciplinary agency of that state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in Paragraph A, B and C.

DATED: *AUGUST 7*, 2014
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct