



Public
STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

February 3, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rene Marlon Kotzen, M.D.
339 Hicks Street
Brooklyn, New York 11201

Joel E. Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Rene Marlon Kotzen, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-28) 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
RENE MARLON KOTZEN, M.D.

DETERMINATION
AND
ORDER
BPMC #11-28

COPY

A hearing was held on January 20, 2011, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated November 17, 2010, were served upon the Respondent, **Rene Marlon Kotzen, M. D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **John B. Waldman, M.D.**, Chair, **Arsenio G. Agopovich, M.D.**, and **Frances E. Tarlton**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Joel E. Abelove, Esq.**, of Counsel. The Respondent, **Rene Marlon Kotzen, M.D.**, did appear, *pro se*. 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 §6530(9)(b) – by having been found guilty of improper professional practice by the State of North Carolina, where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Respondent is also charged with professional misconduct pursuant to Education Law §6530(9)(d) – by surrendering his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the surrender would, if committed in New York state, constitute professional misconduct under the laws of New York state.

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: None

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, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing 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. **Rene Marlon Kotzen, M.D.**, the Respondent, did appear at the hearing and was duly served with process and was notified of the hearing on December 4, 2010. (Petitioner's Exhibit 2.)
2. **Rene Marlon Kotzen, M.D.**, the Respondent, was authorized to practice medicine in New York State on April 10, 1990, by the issuance of license number 181892 by the New York State Education Department (Petitioner's Ex. 4).
3. On or about September 8, 2009, the North Carolina Medical Board, (hereinafter "North Carolina Board"), by a Consent Order (hereinafter "North Carolina Order"), accepted the voluntary surrender of Respondent's license to practice medicine and surgery, based on negligence on more than one occasion, prescribing controlled substances to a close family member without maintaining any medical record of his treatment or prescribing to that family member, and self-prescribing for a long-term

chronic illness for which he is not under the treatment of a physician. (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

"Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Respondent...."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law §6530(9)(d) by surrendering his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Respondent...."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, without counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed. The Respondent was reminded of his right to counsel but indicated that he wished to go forward with the hearing. The record in this case indicates that Respondent had been charged in North Carolina with negligence on more than one occasion, prescribing controlled substances to a close family member without maintaining any medical record of his treatment or prescribing to that family member, and self-prescribing for a long-term chronic illness for which he is not under the treatment of a physician.

The record goes on to show that, in September of 2009, the Respondent agreed to the above charges and signed a Consent Order and thereby voluntarily surrendered his license to practice medicine in North Carolina. The North Carolina Consent Order is part of the record herein as Exhibit # 5. The Administrative Law Judge asked the Respondent if he wished to testify or present any documentation or evidence in mitigation of the penalty the panel would impose. The Respondent indicated that he did not wish to testify and the record does not contain any evidence of mitigating circumstances or remorse.

The panel based its determination on the documentation in the record. The panel considered the full range of penalties available and was unanimous that revocation would

be the proper penalty. Accordingly, as to the penalty to be imposed, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are SUSTAINED
2. The license of the Respondent to practice medicine in New York State is revoked.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York
February 1, 2011

REDACTED

John B. Waldman, M.D., Chair

Arsenio G. Agopovich, M.D.,
Frances E. Tarlton,

To:

Joel E. Ablove, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

Rene Marlon Kotzen, M.D.
339 Hicks Street
Brooklyn, NY 11201

APPENDIX I



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

IN THE MATTER

OF

RENE MARLON KOTZEN, M.D.
CO-09-10-6624-A

NOTICE OF
REFERRAL
PROCEEDING

TO: RENE MARLON KOTZEN, M.D.
REDACTED

RENE MARLON KOTZEN, M.D.
339 Hicks Street
Brooklyn, NY 11201

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 20th day of January, 2011, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

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.

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

November 17, 2010

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Joel E. Abelove
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

RENE MARLON KOTZEN, M.D.
CO-09-10-6624-A

STATEMENT

OF

CHARGES

RENE MARLON KOTZEN, M.D., Respondent, was authorized to practice medicine in New York state on April 10, 1990, by the issuance of license number 181892 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 8, 2009, the North Carolina Medical Board, (hereinafter "North Carolina Board"), by a Consent Order (hereinafter "North Carolina Order"), accepted the voluntary surrender of Respondent's license to practice medicine and surgery, based on negligence on more than one occasion, prescribing controlled substances to a close family member without maintaining any medical record of his treatment or prescribing to that family member, and self-prescribing for a long-term chronic illness for which he is not under the treatment of a physician.

B. The conduct resulting in the North Carolina Board disciplinary action 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);
and/or
2. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based 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 Paragraphs A and/or B.

SECOND SPECIFICATION

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

2. The facts in paragraphs A and/or B.

DATED: *November 17*, 2010
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct