NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

October 28, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nathaniel C. White. Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Roy M. Blackburn, III, M.D.
[redacted]

RE: In the Matter of Roy M. Blackburn, III, M.D.

Dear Parties:

Please replace the Determination and Order (No. 15-239) of the Hearing Committee in the above referenced matter sent to you under cover letter dated October 14, 2015 with the attached Determination and Order. 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. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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,

[redacted]

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER

OF

ROY M. BLACKBURN, III, M.D.,
Respondent

DETERMINATION

AND

ORDER

BPMC-15-239

A hearing was held on August 19, 2015 at the offices of the New York State Department of Health ("the Petitioner"). Kendrick Sears, M.D., Chair, Jose David, M.D., and Paul Lambiase, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Dawn MacKillop-Soller, Esq. was the Administrative Law Judge. The citations in brackets refer to transcript page numbers ["T."] and exhibits ["Ex."] that were accepted into evidence.

The Petitioner appeared by Nathanial C. White, Esq., of counsel to James E. Dering, Esq., General Counsel. A Notice of Referral Proceeding dated June 18, 2015 and a Statement of Charges dated June 17, 2015 were served upon the Respondent, Roy M. Blackburn, III, M.D. ("Respondent")[1] The Respondent appeared, with the consent of the Department, via telephone at the hearing. Respondent was the only witness to testify at the hearing. Evidence was received and a transcript of the proceeding was made. After consideration of the entire record, the Hearing

[1] After several attempts at personal service at both the Respondent's registered address and an additional address the Petitioner had for Respondent, the Petitioner sent the Notice of Hearing and Statement of Charges by certified mail, establishing service pursuant to Public Health Law § 230(10)(d)(i). As a result, at the hearing, the Administrative Law Judge found that jurisdiction was established. [Ex. 2 and 3]

Committee issues this Determination and Order, finding that Respondent was subject to professional discipline in Oregon such that his medical license in New York should be subject to a Censure and Reprimand and probation for a period of five years, which probation is tolled when Respondent is not practicing medicine in New York, with a permanent limitation from prescribing any controlled substances and other conditions.

STATEMENT OF THE CASE

This proceeding was commenced pursuant to Public Health Law § 230(10)(p), which provides for a hearing with circumscribed issues when a licensee is charged solely with a violation of Education Law § 6530(9). Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(d), "having his or her license to practice medicine revoked, suspended or having other disciplinary action taken..." 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.

The Oregon Medical Board (hereinafter "Oregon Board"), through Stipulated Order, as a result of Respondent's professional misconduct, placed disciplinary sanctions, limitations, and conditions on his medical license. [Ex. 5] Whether the Oregon Board's findings are misconduct here hinges on whether the underlying conduct would constitute professional misconduct in New York. The Petitioner charges that the underlying conduct constitutes Negligence on More Than One Occasion, in violation of Education Law § 6530(3), Gross Negligence, in violation of Education Law § 6530(4), and a Failure to Maintain a Record for Each Patient Which Accurately Reflects the Evaluation and Treatment of the Patient, in violation of Education Law § 6530(32). [Ex. 1] Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Roy M. Blackburn, III, M.D., the Respondent, was authorized to practice medicine in New York State on July 2, 1990, by the issuance of license number 182845 by the New York State Education Department. [Ex. 4]

2. By Stipulated Order effective July 11, 2014 and following Respondent's admissions to the charges, the Oregon Board reprimanded his medical license to permanently prohibit prescribing Schedule II or III medications, from prescribing more than 30 days of pain medications to any one patient over a period of one year, from practicing medicine in settings not pre-approved by the Oregon Board's Medical Director, and from supervising physicians' assistants. Although initially ordered to pay a $5,000 civil penalty, on the same date, the Oregon Board modified the Stipulated Order to remove that penalty. [Ex. 5]

3. The Oregon Board based its findings on Respondent's conduct in prescribing controlled substances to five patients between March of 2009 and September of 2013 without performing physical examinations and in the absence of properly documenting their medical records. [Ex. 5, finding (hereinafter "f.") 2,3(3.1)(a)(b)(c)(d)(e)] Further, the Oregon Board found Respondent failed to provide medical rationales for prescribing increasing prescriptions of controlled substances, such as opioids (OxyContin, Hydromorphone, and Morphine) and benzodiazepines, (Lorazepam and Alprazolam) and exposed his patients to harm in authorizing re-fills of

prescriptions in cases where patients missed scheduled appointments or exhibited abnormal and divergent behavior. [Ex. 5, f. 3(3.1)(b)(c)(d)(e)]

HEARING COMMITTEE DETERMINATION

The Hearing Committee concluded that the evidence supports sustaining the charges of Negligence on More Than One Occasion, in violation of Education Law § 6530(3), Gross Negligence, in violation of Education Law § 6530(4), and a Failure to Maintain a Record for Each Patient Which Accurately Reflects the Evaluation and Treatment of the Patient, in violation of Education Law § 6530(32).

A. Negligence on More Than One Occasion

Negligence constituting professional misconduct is the "failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances." Bogdan v. State Bd. for Prof'l Med. Conduct, 195 A.D.2d 86, 88 (3rd Dept. 1993). Negligence pursuant to New York State Education Law § 6530(3) has been found when a physician "repeatedly prescribes habit-forming controlled substances without performing appropriate physical examinations or evaluations necessary for proper diagnosis and treatment of the patients at issue..." and where the patients' medical records are inadequate. Conteh v. Daines, 52 A.D.3d 994, 996 (3rd Dept. 2008). A physician's medical practice is found to seriously deviate from the minimum standard of care when opioid-based controlled substances are prescribed without "obtaining patients' medical histories or undertaking the steps necessary to properly evaluate [the] patients' need for [the] medications or the dosages provided." Roumi v. State Bd. for Prof'l Med. Conduct, 89 A.D.3rd 1170, 1172 (3rd Dept. 2011) (Emphasis added) (Physician was found to overprescribe pain medications or to prescribe and change medications without noting any clinical justification).

The Hearing Committee noted Respondent's failure to comply with the standard of care in the care and treatment of his chronic pain patients, which occurred contemporaneous with fatal consequences and physical harm to his patients. [Ex. 5, f. 3(3.1)(a)(b)(c)(d)(e)] Like New York, in cases where physicians prescribe opioid-based drugs, Oregon required physicians perform physical examinations or evaluations at office visits. Conteh, 52 A.D.3d at 996. Similar to Oregon, New York also requires physicians prescribing habit-forming controlled substance prescriptions to take the time to assess whether prescriptions for controlled substance medications are medically necessary. Roumi, 89 A.D.3rd at 1172. The Hearing Committee considered how the purpose behind these requirements is to keep patients prescribed controlled substances safe from injury and death. The Hearing Committee concluded that in the unsound care rendered to the chronic pain patients that are the subject of the Oregon Board's Order, Respondent failed in this obligation.

With regard to one patient that is the subject of the Oregon Board's Order, Respondent prescribed excessive monthly dosages of up to 1,050 tablets (10mg) of Oxymorphone, 360 tablets of Hydromorphone (opioids), and Lorazepam (1mg) (benzodiazepine) within three months of the patient committing suicide. [Ex. 5, 3(3.1)(a)] In that case, within the two years leading to the patient's death, the Hearing Committee noted Respondent's failure to perform any physical examinations. [Ex. 5, f. 3(3.1)(a)] In a different case, Respondent continued to re-authorize prescription re-fills for controlled substances even after the patient missed scheduled appointments and he learned from a different provider that the patient was experiencing increased lethargy and slurred speech. [Ex. 5, f. 3(3.1)(d)] A separate case involved Respondent's prescription re-fills of Xanax, Methadone, Oxycodone, and Gabapentin (Neurontin) without clinical justification for a pregnant patient, resulting in the patient giving birth to an infant suffering withdrawal symptoms. [Ex. 5, f. 3(3.1)(c)]

In not performing physical examinations or providing clinical justifications for prescribed controlled substances, the Hearing Committee contemplated how Respondent failed to take even the most basic care of his chronic pain patients. This type of medical practice prevented Respondent from properly evaluating vital signs, the effectiveness of prescribed drugs, side-effects of drugs, the treatment plan, and whether highly-addictive medications, such as opioids, should be continued. [Ex. 5, f. 3(3.1)(a)(b)(c)(d)(e)] It also prevented Respondent from properly and thoroughly assessing whether dosages for controlled substance prescriptions for his patients should be discontinued altogether or at the very least, decreased.

It appeared to the Hearing Committee that Respondent lacked knowledge in not only safely prescribing controlled substances but in managing his chronic pain patients. Instead of taking the time to learn how to properly and safely prescribe controlled substances, Respondent chose to continue prescriptions and even increase dosages, resulting in the irresponsible care of his chronic pain patients. Had Respondent's conduct in caring for his chronic pain patients, which included failing to assess whether prescriptions for controlled substances were appropriate and necessary and failing to perform routine physical examinations, occurred in New York, it would have been considered professional misconduct. Accordingly, the Hearing Committee concluded that Respondent's failures constituted Negligence on More Than One Occasion, in violation of Education Law § 6530(3).

B. Gross Negligence

Gross negligence is established if it can be shown that the physician's errors represent a significant or serious deviation from acceptable medical standards, placing the patient at risk for potentially grave consequences. Post v. New York State Department of Health, 245 A.D.2d 985, 986 (3rd Dept. 1997); Minielly v. Commissioner of Health, 222 A.D.2d 750, 751-752 (3rd Dept.

1995). Gross negligence is also found when a physician continues to prescribe excessive amounts of controlled substances without meaningful justification, without determining the cause of patients' pain, and in cases where patients exhibit signs of addiction. Binenfeld v. New York State Dept. of Health, 226 A.D.2d 935, 937 (3rd Dept. 1996). In such cases, it is not required to show that the physician's conduct "posed a foreseeable risk of injury to a particular patient." Binenfeld, 226 A.D.2d at 937.

The Hearing Committee found Respondent's failure to properly calculate the morphine-equivalent dosage given to his patients prescribed opioid-based drugs a severe deviation from the standard of care as it placed his patients at potential risk for fatal consequences. Post, 245 A.D.2d at 986. Specifically, in one case that is the subject of the Oregon Board Order where the patient died, Respondent went so far as to exceed by four times the recommended dosage as per the Federation of State Medical Boards' ("FSMB") guidelines pertaining to opioid dosage and management. [Ex. 5, f. 3(3.1)(a)] The Hearing Committee considered how a different patient's death may have been avoided had Respondent followed guidelines or standards applicable to opioid prescriptions. [Ex. 5, f. 3(3.1)(b)] In that case, which is also the subject of the Oregon Board's Order, Respondent increased prescriptions for Methadone, a Fentanyl patch, and OxyContin despite the patient reporting flushing prescription medications down the toilet, losing medications, and falling down stairs. [Ex. 5, f. 3(3.1)(b)] Contemporaneous with Respondent's prescription practices in that case, the patient was found dead and the cause of death was noted by the state Medical Examiner as "Combined Drug Toxicity". [Ex. 5, f. 3(3.1)(b)] In addition to overprescribing medications in those cases, the Hearing Committee noted how Respondent also failed to provide clinical justifications for his medication choices or the dosages prescribed. [Ex. 5, f. 3(3.1)(a)(b)]

At the hearing, Respondent testified that although aware of guidelines for prescribing opioids to his patients, he did not abide by them or use them as a prescription resource since "guidelines are exactly what they are...guidelines...and not mandates". [T. 38,39] Although true, the Hearing Committee found Respondent's response failed to take into account the purpose behind the guidelines or any set of standards for prescribing opioids, which is to protect patients and prevent the fatal and harmful outcomes that are the subject of the Oregon Board's Order.

Had Respondent's conduct, which included overprescribing opioids without clinical justification in cases where patients exhibited signs of addiction, occurred in New York, it would have been considered professional misconduct. In addition to this conduct presenting a high risk of grave harm to his patients, it occurred simultaneous with the death of two of his patients and physical injury or harm, in the form of addiction, to four of his other patients. As such, the Hearing Committee found that Respondent's conduct evidenced Gross Negligence, in violation of New York Education Law § 6530(4).

C. Failure to Adequately Maintain Patient Records

Deficient medical record keeping forms the basis of a violation of Education Law § 6530(32) when a patient's medical record fails to accurately reflect their care and treatment. An example of this type of failure is when a physician fails to document in patient medical records physical examination findings. Matter of Sidoti v. State Bd. For Prof'l Med. Conduct, 55 A.D.3d 1162, 1166 (3rd Dept. 2008) The purpose behind that section is to ensure that "meaningful information is recorded in case the patient should transfer to another professional or the treating practitioner should become unavailable." Mucciolo v. Fernandez, 195 A.D.2d 623, 624 (3rd Dept. 1993); *See also* Revici v. Commissioner of Educ., 154 A.D.2d 797, 799-800 (3rd Dept. 1989) (Evidence showing medical records of three patients diagnosed with cancer were not adequately maintained

since they failed to contain medical histories, descriptions of conditions, or data from physical examinations).

In addition to the inadequate care and treatment of his chronic pain patients, the Oregon Board's findings include that in numerous circumstances, Respondent failed to record in his patients' medical records necessary and important medical information, resulting in inadequate medical record-keeping. In New York, as in Oregon, in patients prescribed controlled substances, Respondent is required to document in his patients' medical files physical examination findings. Matter of Sidoti, 55 A.D.3d at 1166. The Hearing Committee noted Respondent's failure to fulfill this obligation to all five patients that are the subject of the Oregon Board's Order. [Ex. 5, f. 3(3.1)(a)(b)(c)(d)(e)] In one case where the patient died and in the almost two years of treatment, Respondent never performed a physical examination. [Ex. 5, f. 3(3.1)(a)] In the four remaining cases where Respondent did not routinely perform physical examinations, one patient died and three others exhibited signs of addiction or physical harm. [Ex. 5, f. 3(3.1)(b)(c)(d)(e)] Had Respondent's inadequate record keeping occurred in New York, the Hearing Committee concluded it would have amounted to professional misconduct pursuant to Education Law § 6530(32).

Respondent's conduct in not performing physical examinations and documenting physical examination findings, according to the Hearing Committee, was unsafe medical practice. In not performing physical examinations, the Hearing Committee considered how critical and important information related to the care of chronic pain patients was never recorded, such as vital signs, adverse reactions to prescribed medications, physical signs of addiction or dependence, and reasons for prescribing controlled substances. In the cases that are the subject of the Oregon Board's Order, side effects exhibited by the patients included dropping items, limb numbness, increased drowsiness, suicidal thoughts, and addictive behaviors. [Ex. 5, f. 3(3.1)(a)(b)(c)(d)(e)] A different

case involved Respondent failing to note a patient's receipt of controlled substances from an outside provider. [Ex. 5, f. 3(3.1)(d)] Another patient's death was caused by "Combined Drug Toxicity" and occurred simultaneously with Respondent prescribing increasing dosages of controlled substances. [Ex. 5, f. 3(3.1)(b)]

In not recording routine physical examination findings, the Hearing Committee concluded that Respondent deprived outside providers, such as primary care physicians, of potentially lifesaving information. As such, the Hearing Committee concluded that Respondent's failure to accurately document his chronic pain patients' medical records with physical examination findings evidenced a violation of New York Education Law § 6530(32).

VOTE OF THE HEARING COMMITTEE

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine reprimanded or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in such disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: Sustained (3-0)

PENALTY DISCUSSION

In turning to the assessment of a penalty, the Hearing Committee noted how Respondent has never conceded that his improper prescription practices could have contributed to addiction and physical harm to his chronic pain patients. Although given the opportunity to express remorse or sadness in the loss of two of his patients, which occurred simultaneous with his excessive prescriptions of controlled substances, Respondent focused on how chronic pain management has "destroyed" his "personal and professional life" and how there is a "war on pain docs". [T. 26,

31,42] Instead of admitting that his clinical practice in his treatment of pain management patients was below the standard of care, Respondent was fixated on describing his patients as "very difficult", "complex", and "outliers by their very nature". [T. 26,30,32]

The Hearing Committee also considered the unprofessional nature of Respondent's participation in a violent video clip he sent to the Oregon Pharmacology Board to show his position as against patients selling prescribed drugs and how it did nothing to explain his prescription practices. [Ex. 5, f. 3(3.2)] In all, the Hearing Committee found Respondent failed in his pain management practice to responsibly and effectively care for his chronic pain patients. The Hearing Committee was not convinced that the same prescription practices Respondent exhibited in Oregon would not occur should he decide to practice medicine in New York. Accordingly, the Hearing Committee concluded that Respondent's medical license be subject to a Censure and Reprimand, probation for a period of five years, which will be tolled whenever Respondent is not practicing in New York, and a permanent limitation from prescribing any controlled substances. A copy of the Probationary Terms is attached to this Determination and Order as Appendix 2.

ORDER

IT IS HEREBY ORDERED THAT:

1. The factual allegations and specifications contained in the Statement of Charges (Appendix 1) are SUSTAINED; and

2. Respondent shall be subject to a Censure and Reprimand, probation for a period of five years, which will be tolled whenever Respondent is not practicing in New York, and a permanent limitation on Respondent prescribing any controlled substances; and

3. Respondent shall comply with all the Terms of Probation attached to this Determination and Order; and

4. 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**
October 13, 2015

[redacted]

Kendrick Sears, M.D., Chair

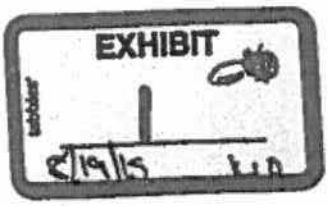
Jose David, M.D., and
Paul Lambiase

To:

Nathaniel C. White, Esq., Attorney for Petitioner
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Roy M. Blackburn, III, M.D.
[redacted]

APPENDIX 1



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

IN THE MATTER
OF
ROY M. BLACKBURN, III, M.D.

NOTICE OF REFERRAL PROCEEDING

TO: Roy M. Blackburn, III, M.D.
[redacted]

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. 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 19th day of August, 2015, at 10:00 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.[1]

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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 or sworn testimony on your behalf. Such evidence 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 which 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, Hedley Park Place, Riverview Center, 150

[1] For GPS purposes, enter "Menands", not "Albany".

Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, 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 twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. 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 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

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

Department attorney: Initial here [redacted]

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 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
June 18 ,2015

[redacted]
MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Nathanial C. White
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER OF ROY M. BLACKBURN, III, M.D.	STATEMENT OF CHARGES

ROY M. BLACKBURN, III, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 2, 1990, by the issuance of license number 182845 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 2, 2014, Respondent entered into a Stipulated Order with the Oregon Medical Board. The Stipulated Order was based on Respondent's conduct that violated provisions of the Oregon Revised Statutes regulating the practice of medicine, including, *inter alia*, unprofessional or dishonorable conduct, gross or repeated acts of negligence, prescribing controlled substances without a legitimate medical purpose, prescribing controlled substances without following accepted procedures for examination of patients, or prescribing controlled substances without following accepted procedures for record keeping. On or about July 11, 2014, the Oregon Medical Board approved the Stipulated Order and imposed disciplinary sanctions and terms that included, *inter alia*, reprimand, a $5,000 civil penalty, a five year term of probation, a limitation from prescribing Schedule II or III medications, a limitation that Respondent cannot prescribe more than 30 days of medications for chronic pain to any one patient over a period of one year and a limitation that Respondent can only practice medicine in a setting that is pre-approved by the Oregon Board's Medical Director.

B. The conduct resulting in the July 11, 2014 Oregon 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) (practicing the profession with negligence on more than one occasion); and/or

2. New York Education Law §6530(4) (practicing the profession with gross negligence on a particular occasion); and/or
3. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state as alleged in the facts of the following:

1. The facts in paragraphs A and B.

DATE: June 17, 2015
Albany, New York

[redacted]

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and to governing law. Any act of professional misconduct by Respondent as defined by New York Education Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York Public Health Law § 230 (10) or (19), or both.
2. Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502, including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in New York Education Law § 6502(4) to avoid registration and payment of fees.
3. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, at least every six months and as otherwise requested, or within thirty days of any change in the information, the following information in writing:
    a. a full description of the Respondent's employment and practice;
    b. all professional and residential addresses and telephone numbers within and outside of New York State;
    c. any and all information concerning investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency;
    d. any and all information concerning investigations, terminations, or disciplinary matters by any institution or facility.
4. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, copies of all applications relating to the practice of medicine, including but not limited to, privileges, insurance, and licensure, in any jurisdiction, concurrent with their submission.
5. Respondent shall cooperate fully with, and will respond within two weeks to, OPMC requests to provide written periodic verification of Respondent's compliance with these terms of probation. Upon the Director of OPMC's request, Respondent shall meet personally with a person designated by the Director.
6. The probation period is for five years, which will be tolled whenever Respondent is not practicing in New York. Respondent shall notify the Director of OPMC, in writing, within 90 days of his plan to return to New York State to practice medicine. Upon Respondent's return to active practice in New York State, the probationary period shall begin and Respondent shall fulfill all probation terms and

such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.

7. The Director of OPMC, or his/her designee, may review Respondent's professional performance. This review may include but shall not be limited to:
    a. A review of office records, patient records, hospital charts, and/or electronic records;
    b. Interviews with or periodic visits with Respondent and/or staff at practice locations or at OPMC offices;
    c. A review of any determinations, decisions, or investigations by any state medical board.
8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients, and contain all information required by State rules and regulations concerning controlled substances.
9. Respondent shall comply with these Terms of Probation, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or a violation of these terms, the Director of OPMC and/or the Board for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other proceeding authorized by law, against the Respondent.