

November 25, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Quist, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Joanne Rizzi-Richman, M.D.
REDACTED

Joanne Rizzi-Richman, M.D.
REDACTED

P. Baird Joslin, Jr., Esq.
O'Connor, O'Connor, Bresee & First, PC
20 Corporate Woods Boulevard
Albany, New York 12211

RE: In the Matter of Joanne Rizzi-Richman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-294) 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,

REDACTED

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

COPY

IN THE MATTER
OF
JOANNE RIZZI-RICHMAN, M.D.

DETERMINATION

AND

ORDER

BPMC #14-294

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A Notice of Referral Proceeding and Statement of Charges, both dated April 4, 2014, were served upon Joanne Rizzi-Richman, M.D. ("Respondent"). A hearing, pursuant to N.Y. Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§301-307 and 401, was held on September 17, 2014 at the Department's offices at 150 Broadway, Albany, New York. Copies of the Notice of Referral Proceeding and Statement of Charges are attached as Appendix 1.

Peter B. Kane, M.D., Elaine Lombardi Wilk, D.O., and David F. Irvine, DHSc, RPA-C, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee ("Committee") in this matter. Administrative Law Judge Ann H. Gayle served as the administrative officer. The Department appeared by David W. Quist, Associate Counsel. The Respondent appeared by P. Baird Joslin, Jr., Esq. of O'Connor, O'Connor, Bresse & First, PC.

STATEMENT OF CASE

Respondent is charged with professional misconduct pursuant to N.Y. Education Law ("Educ. Law") §6530(9)(d) for having had disciplinary action taken by a professional disciplinary agency of another state. When a licensee is charged with misconduct under Educ.

Law §6530(9), the scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee (PHL §230(10)(p)).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in brackets, which refer to transcript page numbers ["T"] and exhibits ["Ex"] that were accepted into evidence, represent evidence found persuasive by the Committee in arriving at a particular finding. All Committee findings were unanimous.

1. Respondent was notified of the hearing on or about April 17, 2014, and Respondent appeared at the hearing represented by Counsel. [Ex 2; T 5-6]
2. Respondent was authorized to practice medicine in New York State on June 24, 1997 by the issuance of license number 207066 by the New York State Education Department. [Ex 3]
3. On April 23, 2013, Respondent consented to the entry of an order by the Arizona Medical Board ("Arizona Board"), and on June 10, 2013, in an Order for Letter of Reprimand and Probation and Consent to Same Before the Arizona Medical Board, Respondent was issued a Letter of Reprimand and placed on probation for two years by said Board. One of the terms and conditions of probation of that Order was that Respondent participate in the Arizona Board's Physician Health Program, and her participation was retroactive to November 14, 2012. [Ex 4; Ex I; T 32]
4. The Arizona Board action arose from Respondent's writing Fioricet prescriptions for her ex-husband, then filling the prescriptions herself, and taking the Fioricet for her own use. [Ex 4; Ex J]
5. Respondent used Fioricet for migraine headaches from the time it was prescribed for her

during her residency programs in the 1990s until she ceased writing the Fioricet prescriptions for her ex-husband and filling those prescriptions for her own use in 2012.

[T22]

6. Respondent did not take Fioricet when she was working/caring for patients; as such the Arizona action did not involve patient harm. [T 22-23]
7. Respondent, upon learning that her prescription-writing for her ex-husband was reported to the Arizona Board, immediately sought treatment, ceased taking Fioricet, and has not used Fioricet in two years. [Ex E; T 26-28]

CONCLUSIONS OF LAW

Respondent was charged with professional misconduct under Educ. Law §6530(9)(d) by having her license to practice medicine revoked, suspended or having other disciplinary action taken, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state (Specification of Charges). The Committee concludes that the conduct upon which the Arizona Board's findings was based and the disciplinary action was taken, *i.e.*, negligence on more than one occasion and being dependent on or a habitual user of narcotics, barbiturates, or other drugs having similar effects, if committed in New York state would constitute professional misconduct under the laws of New York state, to wit, Educ. Law §§6530(3) and (8) respectively.

As such, the Committee unanimously concludes that the Specification of Charges is sustained.

DETERMINATION AS TO PENALTY

All of Respondent's random drug screenings have been negative, she has been in

compliance with the probationary terms imposed by the Arizona Board, and she has continued to safely treat patients throughout her probationary period in Arizona. [Ex L; Ex M; Ex N; T 32-34]

Based on the foregoing, the Committee, in considering the full range of penalties available pursuant to PHL Law §230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) a fine up to \$10,000 per specification sustained; (8) a course of education or training; (9) performance of public service; and, (10) probation, unanimously concludes that probation for one year, with such probation to include Respondent's submission to random screening for alcohol and drugs, is an appropriate penalty for Respondent's wrongdoing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The misconduct charge under Educ. Law §6530(9)(d) of having had disciplinary action taken is sustained.
2. Pursuant to PHL §230-a(9) Respondent shall be placed on Probation for a period of one (1) year, tolled when Respondent is not practicing medicine in New York State. Terms of Probation are attached to this Determination and Order as Appendix 2.
3. This order shall be effective upon service on the Respondent by personal service or by certified mail as required under PHL §230(10)(h)

DATED: ESTERO, Florida

NOVEMBER 26 2014

REDACTED

~~PETER B. KANE, M.D., Chair
ELAINE LOMBARDI WILK, D.O.
DAVID F. IRVINE, DHSc, RPA-C~~

To: David W. Quist
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower
Empire State Plaza
Albany, New York 12237

Joanne Rizzi-Richman, M.D.
REDACTED

Joanne Rizzi-Richman, M.D.
REDACTED

P. Baird Joslin, Jr., Esq.
O'Connor, O'Connor, Bresee & First, PC
20 Corporate Woods Boulevard
Albany, New York 12211

APPENDIX 1

Matter of Joanne Rizzi-Richman, M.D.

IN THE MATTER
OF
JOANNE RIZZI-RICHMAN, M.D.
CO-13-06-3128A

NOTICE OF
REFERRAL
PROCEEDING

TO: JoAnne Rizzi-Richman, M.D.
10412 East Cannon Drive
Scottsdale, AZ 85258

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 22nd day of May, 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 her _____

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

April 4, 2014

REDACTED

~~MICHAEL A. HISER~~
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

David W. Quist
Associate Attorney
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
JOANNE RIZZI-RICHMAN, M.D.

STATEMENT
OF
CHARGES

JOANNE RIZZI-RICHMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 24, 1997, by the issuance of license number 207066 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 10, 2013, the Arizona Medical Board ("Board"), by Order for Letter of Reprimand and Probation and Consent to the Same ("Order"), determined that Respondent had used Fioricet to excess. The Board found that Respondent had engaged in unprofessional conduct by "habitual intemperance in the use of alcohol or habitual substance abuse," and by prescribing a controlled substance or prescription-only drug for other than accepted therapeutic purposes.

B. Pursuant to the terms of the Order, Respondent was issued a reprimand and placed on probation subject to conditions, among which included participation in the Board's Physician Health Program monitoring service and associated testing and monitoring under that program, at Respondent's expense, agreement to enter into an

interim order of treatment in the event drugs or alcohol are used, Respondent's notification of all employers and facilities where Respondent has privileges, and agreement to participate in a similar program in another state if Respondent were to reside in or practice as a physician in a state other than Arizona.

C. Fioricet is a barbiturate.

D. The conduct resulting in the Board's Decision and Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York Education Law Sec. 6530(3) (negligence on more than one occasion) and/or Education Law Sec. 6530(8) (being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects).

SPECIFICATION OF CHARGES

HAVING HAD DISCIPLINARY ACTION TAKEN

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 (namely N.Y. Educ. Law §§ 6530 (3) and/or 6530 (8)) as alleged in the facts of the following:

1. The facts in Paragraphs A through D.

DATE: April 4, 2014
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 governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law §230(19).
2. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Menands, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of her employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
3. Respondent shall maintain active registration of her license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of her compliance with the terms of this Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if she is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled 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.
6. 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.
7. Respondent shall submit to random screening for alcohol and drugs as directed by OPMC. The frequency, duration and conditions of such screening shall be determined by the Director of OPMC.

8. Respondent shall be solely responsible for all expenses associated with random alcohol and drug screening including fees, if any, to the screening monitor should a screening monitor be required.
9. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
10. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, the terms of these Probation Terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.