



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, 5th Floor

Troy, New York 12180-2299

January 26, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Viorel Boborodea, M.D.
Str. Scoala de Inot
Bloc 2 B, ap 1
Sibiu, Romania 550000

Robert Bogan, Esq.
NYS Department of Health
Hedley Building - 4th Floor
433 River Street
Troy, New York 12180

Viorel Boborodea, M.D.
5700 Arlington Avenue, Apt. 19 L
Bronx, New York 10471

RE: In the Matter of Viorel Boborodea, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-17) 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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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.

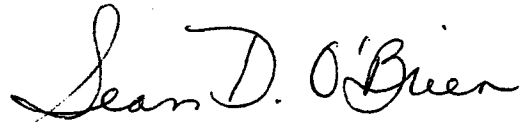
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., 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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

COPY

IN THE MATTER
OF
VIOREL BOBORODEA M.D.

DETERMINATION

AND

ORDER

BPMC #07-17

A hearing was held on December 21, 2006, at the offices of the New York State Department of Health (Petitioner). A Notice of Referral Proceeding and a Statement of Charges, both dated July 14, 2006 were served upon the Respondent, **Viorel Boborodea M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg M.D.**, Chairperson, **Arsenio G. Agopovitch 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. **Kimberly A. O'Brien Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens Jr. Esq.**, General Counsel, by **Robert Bogan Esq.**, of Counsel. The Respondent **Viorel Boborodea M.D.** appeared in person and was not represented by counsel.

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)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix A.

WITNESSES

For the Petitioner:

None

For the Respondent:

Viorel Boborodea, M.D.

Robert Howe, M.D.*

Karen M. Ferroni, M.D.*

*Witnesses were sworn in and their testimony was taken over the telephone with the court's approval and the consent of both parties (Tr. p. 27). In advance of the hearing, the Petitioner and Respondent had planned for the telephone testimony (Tr. pp. 23-25, 27).

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 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. **Unless otherwise specified.**

1. Viorel Boborodea, the Respondent, was authorized to practice medicine in New York State on September 29, 1989, by the issuance of license number 180194 by the New York State Education Department (Petitioner's Ex. 4).

2. On or about March 15, 2006, the Commonwealth of Massachusetts, Board of Registration in Medicine (hereinafter Massachusetts Board), by Final Decision & Order (hereinafter Massachusetts Order), revoked Respondent's inchoate right to renew his license to practice medicine. The Massachusetts Board based the Massachusetts Order on its findings that the Respondent's treatment of five obstetrical patients "demonstrated a pattern of substandard care" and he practiced medicine with negligence on repeated occasions. The Massachusetts Board also found that the Respondent altered a medical record violating their regulations and engaging in conduct that "has the capacity to deceive or defraud" (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

New York Education Law Section 6530(3) – “Practicing the profession with negligence on more than one occasion;”

New York Education Law Section 6530(32) – “failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient...”

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 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.

VOTE: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine suspended would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The evidence from the Massachusetts proceeding is sufficient to sustain that the Respondent was negligent (Petitioner's Ex. 5). The Hearing Committee determined that the Massachusetts Board findings reveal that the Respondent failed to provide optimal care for some of the patients. Therefore, the Hearing Committee has sustained the charge in the New York Statement of Charges that had these acts occurred in New York State, they would have constituted professional misconduct, negligence on more than one occasion pursuant to Education Law Section 6530(3) (Petitioner's Ex. 1, Petitioner's Ex. 5).

The New York Statement of Charges also alleged that these acts, had they occurred in New York State would have constituted professional misconduct; specifically gross negligence pursuant to Education Law Section 6530(4) (Petitioner's Ex. 1). The Hearing Committee determined that while the Massachusetts Board findings constitute negligence, the deviations from the standard of care do not rise to the level of gross negligence (Petitioner's Ex. 5).

The New York Statement of Charges also alleged that these acts, had they occurred in New York State would have constituted professional misconduct: specifically incompetence pursuant to Education Law Section 6530(5) and gross incompetence pursuant to Education Law Section 6530(6) (Petitioner's Ex.1). The Hearing Committee determined that the evidence provided is not sufficient to sustain the charges that the Respondent did not know what he was doing (Petitioner's Ex. 5).

Finally, the findings of the Massachusetts Board that the Respondent altered a patient record are sufficient to sustain the charge contained in the New York Statement of Charges of "failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient" pursuant to Education Law Section 6530 (32) (Petitioner's Ex. 1,

Petitioner's Ex. 5). The Respondent's action of altering the patient record was neither excusable nor acceptable. However, the Hearing Committee did not find sufficient evidence to sustain the charges contained in the New York Statement of Charges that the Respondent's action of altering a patient record constituted fraud or moral unfitness pursuant to Education Law Sections 6530(2) and 6530(20). The Massachusetts Board found there was one alteration of one patient record made in the presence of hospital staff. The Hearing Committee has determined that there is insufficient evidence that the alteration would and/or was made with the intent to deceive or defraud (Petitioner's Ex. 5).

In the instant case the Respondent was charged with professional misconduct based solely on the findings of administrative violations by the Massachusetts Board. New York State Public Health Law Section 230(10) (p) requires that the Committee hear and consider only evidence and testimony "relating to the nature and severity of the penalty to be imposed upon the licensee." The Petitioner did not present any witnesses and offered only documentary evidence. Initially the Petitioner requested that the Hearing Committee revoke Respondent's license to practice medicine as was done by the Massachusetts Board. However, after hearing the Respondent's presentation, the Petitioner stated that he would not make a penalty recommendation and asked the two Hearing Committee Physicians to review the Massachusetts findings regarding Respondent's medical care and determine what if any practice restriction should be imposed on the Respondent (Tr. pp.52, 55, 56). During the Petitioner's closing argument, the Petitioner said he would "state only positive things for him [Respondent]" (Tr. p.55). The Hearing Committee was specifically asked to take note of Respondent's New York State Education/Licensure file, including comments from Respondent's medical professors about his outstanding skill and dedication to his patients (Tr. p. 55, Petitioner's Ex. 4). The Petitioner also emphasized the Respondent's willingness

to travel from Romania, where he currently practices medicine to appear at the proceeding (Tr. pp. 55–56). Finally, the Petitioner stressed that the purpose of a penalty “is not to punish people” but to place practice restrictions on a licensee if it is necessary to protect the people of New York State (Tr. pp. 53, 55). The Hearing Committee considered the Petitioner’s expressions of support for the Respondent in making a penalty determination.

The Respondent asked the Hearing Committee to consider his commitment to the profession and his record during his “30 years studying and preparing for this profession” (Tr. pp. 12-19). The Respondent a United States Citizen, came to this country at the age of twenty-three as a political refugee, and completed a Bachelors degree in two years and medical school in three years with outstanding grades and recommendations (Tr. p. 12, Petitioner’s Ex. 4). The Committee also took note that the Respondent has provided care to indigent patients, made over 2,000 deliveries, practiced medicine in Massachusetts with full privileges at two hospitals until 2004, and has been practicing in Romania from 2004 to the present and recently became the Director of a Women’s Clinic in Bucharest Romania (Tr. pp.18-20, Petitioner’s Ex. 5, Respondent’s Ex. C, Respondent’s Ex. D).

At the hearing, the Respondent introduced two physician witnesses Robert Howe, M.D., Mercy Hospital and Karen M. Ferroni, M.D., Holyoke Hospital who both know the Respondent in a professional capacity and have worked with the Respondent in Massachusetts in the field of Obstetrics and Gynecology. Dr. Howe testified that he has known the Respondent for eight years or longer, routinely reviewed the Respondent’s care in his role on the quality assurance committee at Mercy Hospital where the Respondent had privileges, and that he performed surgery with the Respondent (Tr. pp. 30–33). Dr. Howe testified that Bay State Medical Center (Bay State) asked him to review the Respondent’s Bay State records for an “independent opinion,” and these records formed the basis for the

termination of Respondent's privileges at Bay State and the Massachusetts Action (Tr. pp. 32,35). Dr. Howe testified that he found no indication of misconduct on the part of the Respondent in the Bay State record, the routine quality assurance reviews he performed or in his practice with the Respondent (Tr. 27-39). Based on the breadth of Dr. Howe's experience with the Respondent and the scope of his review of the Respondent's practice, the Hearing Committee found Dr. Howe's testimony that the Respondent would be an "asset in whatever community he practiced" both compelling and credible (Tr. p. 33). Dr. Ferroni testified that she is the Medical Director at Holyoke Hospital, has known the Respondent for ten years or more, and worked closely with the Respondent in her practice as a Maternal Fetal Specialist. Dr. Ferroni stated she provided high risk consults to the Respondent and had a "good window into his obstetrics practice" (Tr. p. 46). Like Dr. Howe, Dr. Ferroni was a quality assurance team member at Mercy Hospital and had the opportunity to review Respondent's record of practice (Tr. 41-46). Both Dr. Howe and Dr. Ferroni testified that the Respondent continued to practice medicine in Massachusetts with full privileges at Holyoke and Mercy Hospital regardless of Bay State's termination of the Respondent's privileges in 2002 (Tr. pp. 17, 33-34, 44-45). The Hearing Committee found Dr. Howe and Dr. Ferroni highly credible and gave great weight to their testimony, most notably their unequivocal support for the Respondent practicing as a physician in New York State or anywhere else (Tr. pp. 32-33, 44-45).

The Hearing Committee found the Respondent's practice history, New York Education/Licensure file, Curriculum Vitae, five letters of recommendation, and witness testimony constitute a strong body of evidence to support that the Respondent is a dedicated and skilled physician. The Respondent stated on the record his desire to practice in New York and expressed a sincere willingness to do whatever is deemed necessary to be allowed

to practice in New York. The Respondent may practice in the State of New York and shall be on probation for a period of two years and shall successfully complete a recordkeeping course within six months of the effective date of his probation. The Terms of Probation are attached and made part of this Determination and Order as Appendix B, Terms of Probation.


ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent shall be on probation for a period of two (2) years from the effective date of this Order, and is subject to the terms and conditions of this Order and as set forth in Appendix B, Terms of Probation.
2. The Respondent shall successfully complete an approved medical recordkeeping course within six months of the effective date of his probation.
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: New York, New York

January 23, 2007


Lyon M. Greenberg, M.D.
Chairperson

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

APPENDIX A

Appendix A



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

IN THE MATTER
OF
VIOREL BOBORODEA, M.D.
CO-06-05-2668-A

NOTICE OF
REFERRAL
PROCEEDING

TO: VIOREL BOBORODEA, M.D.
Str. Scoala de Inot
Bloc 2 B, ap 1
Sibiu, Romania 550000

vboborodea@yahoo.com

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 September, 2006, 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, 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. 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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, 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 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 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 New York State Administrative Procedure 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.

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

July 20, 2006



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
VIOREL BOBORODEA, M.D.
CO-06-05-2668-A

STATEMENT
OF
CHARGES

VIOREL BOBORODEA, Respondent, was authorized to practice medicine in New York state on September 29, 1989, by the issuance of license number 180194 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 15, 2006, the Commonwealth of Massachusetts, Board of Registration in Medicine (hereinafter "Massachusetts Board"), by a Final Decision and Order (hereinafter "Massachusetts Order"), REVOKED Respondent's right to renew his license to practice medicine, based on providing substandard care to three (3) patients and altering or destroying an original copy of a patient's medical record.

B. The conduct resulting in the Massachusetts 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(4) (gross negligence);
4. New York Education Law §6530(5) (incompetence on more than one occasion);
5. New York Education Law §6530(6) (gross incompetence);
6. New York Education Law §6530(20) (moral unfitness); and/or
7. New York Education Law §6530(32) (failing 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 State Education Law §6530(9)(d) by having her license to practice medicine revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

DATED: *July 20*, 2006
Albany, New York


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

APPENDIX B

Appendix B

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Respondent shall be on probation for two years and the period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall successfully complete an approved record keeping course within six (6) months of the effective date of the probationary period.
8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of

these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.