



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

June 25, 2018

**AMENDED LETTER**  
**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

John Thomas Viti, Esq.  
Bureau of Professional Medical Conduct  
90 Church Street  
New York, New York 10007

Edwin Kulubya, M.D.  


**RE: In the Matter of Edwin Kulubya, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.18-148) 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. 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 Signature]

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

June 20, 2018

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Thomas Viti, Esq.  
Bureau of Professional Medical Conduct  
90 Church Street  
New York, New York 10007

Edwin Kulubya, M.D.  
[REDACTED]

**RE: In the Matter of Edwin Kulubya, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.18-136) 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. 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,

A solid black rectangular redaction box covering the signature of James F. Horan.

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure

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

-----X  
: :  
IN THE MATTER : :  
: :  
OF : :  
: :  
EDWIN KULUBYA, M.D. : :  
: :  
-----X

DETERMINATION  
AND  
ORDER  
18-148

A hearing was held on April 19, 2018, at the offices of the New York State Department of Health (Department), 90 Church Street, New York, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **CASSANDRA E. HENDERSON, M.D.**, Chairperson, **DAVID M. KIRSHY, M.D.** and **RUTH HOROWITZ, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. **NATALIE J. BORDEAUX, ADMINISTRATIVE LAW JUDGE**, served as the administrative officer.

The Department appeared by John Thomas Viti, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated February 26, 2018, were duly served upon Edwin Kulubya, M.D. (Respondent) pursuant to PHL § 230(10)(d)(i), who testified at the hearing on his own behalf. (Exhibit 1 and attached as Appendix I.) There were no other witnesses at the hearing. The hearing committee received and examined documents from the Department (Exhibits 1-7). A stenographic reporter prepared a transcript of the proceeding, which was received on May 16, 2018. After consideration of the entire record, the hearing committee sustains the charge that the Respondent committed professional misconduct, in violation of Education Law (Educ. Law) § 6530(9)(d), and that pursuant to PHL § 230-a, the penalty of a period of suspension, wholly, of the Respondent's medical license with probation and conditions is appropriate.

## **BACKGROUND**

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law 6530(9)(d), by having disciplinary action taken against his license to practice medicine in California where the conduct resulting in the disciplinary action taken would, if committed in New York state, constitute professional misconduct under the laws of New York state. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

## **FINDINGS OF FACT**

The following findings and conclusions are the unanimous determinations of the hearing committee:

1. The Respondent was authorized to practice medicine in New York on July 7, 2000 under license number 218307. (Exhibit 5.)
2. On or about October 13, 2014, the Respondent performed or supervised the administration of an Epidural Steroid Injection and facet injections under fluoroscopy with intravenous (IV) sedation to patient C.B. Approximately 10 minutes after the end of the procedure, C.B. became unresponsive and was noted to be in cardiac arrest. (Exhibit 6.)
3. On June 15, 2016, the Medical Board of California (CA Board) charged the Respondent with unprofessional conduct for administering IV procedural sedation in an unaccredited facility and failing to maintain adequate records of his care and treatment of C.B., including the IV sedation dosage administered and names of personnel caring for C.B. (Exhibit 6.)
4. On August 3, 2017, the Respondent entered into a stipulated settlement and disciplinary order with the CA Board regarding the June 15, 2016 charges, whereby he waived his right to

contest the stated charges. The CA Board placed the Respondent on probation for five years, during which he was ordered to complete at least 40 hours of educational programs addressing his medical practice deficiencies during each year of his probation term, and enroll in additional prescribing practices and medical recordkeeping courses. During probation, the Respondent was prohibited from performing IV sedation for interventional pain procedures and was only permitted to practice medicine under the supervision of a Board-approved practice monitor. The Respondent was also required to complete a clinical competence assessment program. (Exhibit 6.)

#### VOTE OF THE HEARING COMMITTEE

The Respondent violated New York Educ. Law § 6530(9)(d) by having disciplinary action against his California medical license which would, if committed in New York state, constitute professional misconduct under the laws of New York State.

VOTE: Sustained (3-0)

#### CONCLUSIONS OF LAW

The Department's February 26, 2018 Statement of Charges alleges that the Respondent's misconduct in California described in the August 3, 2017 settlement would, if committed in New York, constitute professional misconduct as defined in Educ. Law §§ 6530(3), (4), (16), and/or (32). (Exhibit 1.)

The hearing committee unanimously agreed that the Respondent's documentation deficiencies resulting in the CA Board's disciplinary actions would, if committed in New York, constitute misconduct pursuant to Educ. Law §§ 6530(3) and 6530(32), practicing the profession with negligence on more than one occasion and failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, respectively. Over the course of multiple appointments with C.B. from July 26, 2013 through October 13, 2014, the Respondent's

documentation contained inconsistencies regarding C.B.'s treatment, including whether C.B. made satisfactory progress towards her pain management goals. Although C.B.'s progress notes recorded C.B.'s reports of a pain level of 10/10, the same notes also reported that C.B. obtained "good pain relief from the medication." The Respondent's records also failed to indicate whether he attempted to incorporate active, self-management approaches to address C.B.'s chronic pain, such as physical therapy or psychological therapy. In addition, the Respondent's documentation contains neither a controlled substance agreement between the Respondent and C.B. nor other documentation to show that the Respondent informed C.B. of the risks and benefits of controlled substances.

However, the hearing committee was not persuaded that the Respondent's actions would, if committed in New York, constitute a violation of Educ. Law §§ 6530(4) and 6530(16), practicing the profession with gross negligence on a particular occasion, and a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations, respectively. The Department's evidence failed to establish that the Respondent's conduct presented a risk of harm to patient C.B, nor did the evidence establish that the Respondent's actions violated applicable laws, rules or regulations.

After determining to sustain the charge, the committee considered all possible penalties authorized by PHL § 230-a. The committee voted unanimously (3-0) that the Respondent's license to practice medicine in New York be suspended wholly for a period of four years, after which a six-month probation period will be imposed upon the Respondent's ability to practice medicine in New York. During the Respondent's six-month probation while practicing medicine in New York, he will be required to complete one medical recordkeeping course and to practice under the supervision of a practice monitor.



ORDER

**IT IS HEREBY ORDERED THAT:**

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine is wholly **SUSPENDED**, pursuant to PHL § 230-a(2), for a period of four years, at which time he is placed on probation for a period of six months subject to the terms of probation (Appendix II). The probationary period is tolled while the Respondent is not engaged in the practice of medicine in the state of New York. During the Respondent's 6-month probation term:
  - a. The Respondent shall practice medicine in New York only under the supervision of a Board-approved practice monitor; and
  - b. The Respondent shall complete one professional medical recordkeeping course, pursuant to PHL § 230-a(8).
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h)(i).

DATED: New York, New York  
                                , 2018  
                                NYS DEPT OF HEALTH

JUN 20 2018

Division of Legal Affairs  
Bureau of Adjudication

[REDACTED]  
Cassandra E. Henderson, M.D.  
Chairperson

David M. Kirshy, M.D.  
Ruth Horowitz, Ph.D.

To: Edwin Kulubya, M.D.

[REDACTED]  
  
John Thomas Viti, Esq., Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street, 4<sup>th</sup> Floor  
New York, NY 10007

# APPENDIX I

IN THE MATTER  
OF  
EDWIN KULUBYA, M.D.

STATEMENT  
OF  
CHARGES

EDWIN KULUBYA, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 7, 2000, by the issuance of license number 218307 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about August 3, 2017, The California Medical Board issued a Stipulated Settlement and Disciplinary Order (the "Order"). The Order revoked Respondent's license to practice medicine, stayed that revocation, and placed Respondent on probation for 5 years with a Practice Monitor. The Order required Respondent to complete a Continuing Medical Education Course, specifically in Medical Records Keeping and Prescribing Practices. The Order required the Respondent to enter into a Clinical Competency Assessment Program. In addition, the Order prohibited the Respondent from performing IV sedation for interventional pain procedures and prohibited the Respondent from supervising physician assistants and advanced practice nurses during probation. The Order was predicated on the findings, which the Respondent did not contest, that Respondent had engaged in conduct which violated the California Business and Professional Code (the "Code") § 2234(b) gross negligence, § 2234(c) repeated acts of negligence, §§ 2215-2217, failure to perform a procedure in an accredited facility, §2266 failure to maintain adequate and accurate records, with

respect to one patient from on or about July 26, 2013 until and through October 13, 2014.

1. The conduct resulting in the Order would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

- a. New York Education Law § 6530(3) (Practicing the profession with negligence on more than one occasion.)
- b. New York Education Law § 6530(4) (Practicing the profession with gross negligence on a particular occasion.)
- c. New York Education Law § 6530(16) (A willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations, governing the practice of medicine.)
- e. New York Education Law § 6530(32) (Failing to maintain a record for each patient which accurately reflects the care and treatment of the patient.)

#### **SPECIFICATION OF CHARGES**

#### **HAVING HAD DISCIPLINARY ACTION TAKEN**

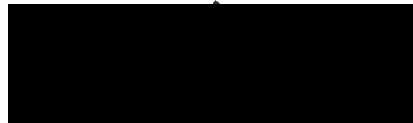
Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having 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), (4), (16) and/or (32) as alleged in the facts of the following:

1. The facts in Paragraph A and its subparagraphs.

DATE: February 26, 2018

New York, New York



Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

# APPENDIX II

### 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 Educ. Law 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his 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.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. 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 he 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. 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.
7. The Respondent shall practice medicine in New York State only when monitored by a licensed physician, board certified in an appropriate specialty (practice monitor), who is proposed by Respondent and subject to the written approval of the Director of the OPMC.
  - a. The Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit the Respondent's medical practice at each and every location, on a random, unannounced basis at least monthly and shall examine a selection (no fewer

than 20) of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to the OPMC.

- b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
  - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.
8. The terms set forth in the paragraphs above are the minimum probation terms to be imposed on the Respondent, and other terms may be added by the Director of the OPMC. All compliance costs, including expenses and fees associated with the practice monitor, shall be the Respondent's responsibility.
9. Respondent shall comply with these probationary terms, 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 may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.