



## Department of Health

ANDREW M. CUOMO  
Governor

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

LISA PINO, M.A., J.D.  
Executive Deputy Commissioner

July 21, 2021

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Jesse B. Baldwin, Esq.  
Addelman Cross & Baldwin, PC  
5680 Main Street  
Buffalo, New York 14221

Joseph Thomas, M.D.  
2374 Village Common Drive, Suite 100  
Erie, PA 16506

**RE: In the Matter of Joseph Thomas, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 21-146) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Office of Professional Medical Conduct  
Riverview Center  
150 Broadway - Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph

(i), (McKinney Supp. 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 licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

Jean T. Carney, 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 Ms. Carney 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,



James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
Enclosure

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

**COPY**

-----X  
IN THE MATTER  
OF  
JOSEPH THOMAS, M.D.  
-----X

DETERMINATION  
AND  
ORDER  
BPMC-21-146

A hearing was held on May 12, 2021 and June 23, 2021, remotely by videoconference. Pursuant to Public Health Law (PHL) § 230(10)(e), **Steven M. Lapidus, M.D., Chairperson, Jerry R. Balentine, D.O., and Paul J. Lambiase**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Tina M. Champion**, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by John Thomas Viti, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges, both dated April 1, 2021, were duly served upon Joseph Thomas, M.D. (Respondent), who appeared at the hearing by his attorney, Jesse Baldwin.<sup>1</sup> The Respondent testified on his own behalf. James Hitt, M.D., also testified on behalf of the Respondent as an expert witness.

The Hearing Committee received and examined documents from the Department and the Respondent. (Dept. Exs. 1-5; Resp. Exs. A-F.) The ALJ marked exhibits into the hearing record. (ALJ Exs. I-III.) A stenographic reporter prepared a transcript of the proceeding.

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<sup>1</sup> The Statement of Charges was verbally amended during a pre-hearing conference with the parties on June 6, 2021 to reflect the correction requested by the Department in a May 6, 2021 letter to ALJ Champion. The amendment pertained to changing the word "and" to the word "or" to correctly reflect the wording used in a Consent Order and Agreement entered in Pennsylvania. (see ALJ Ex. I; Dept. Ex. 5.)

### **BACKGROUND**

The Department brought this 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 one specification of professional misconduct pursuant to Educ. Law § 6530(9)(d) for "[h]aving 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." Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

### **FINDINGS OF FACT**

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. The Respondent has been licensed to practice medicine in New York State since 1982 pursuant to license number 150785. (Dept. Ex. 2; Testimony [T.] Thomas.)
2. The Respondent is the owner of a pain management practice located in Erie, Pennsylvania. He also maintains an office in Western New York. (T. Thomas.)
3. On August 19, 2020, the State Board of Medicine for the Commonwealth of Pennsylvania entered an Order Correcting Consent Agreement Order and made final a corrected version of a Consent Agreement and Order (case number 17-49-13414) dated April 20, 2020. (Dept. Ex. 5.)



4. The final Consent Agreement and Order placed a public reprimand on the Respondent's Pennsylvania Board of Medicine record, imposed a civil penalty of \$5,000 and costs of \$7,242.84, and required the Respondent to complete 25 hours of remedial education on the topics of infection control, medical record keeping, and narcotic storage. (Dept. Ex. 5.)

5. The final Consent Agreement and Order in Pennsylvania was the result of an investigation into the practice of the Respondent after at least nine people in Erie, Pennsylvania, presented to local health care facilities in or about November 2017 for treatment of worsening health conditions after recently receiving epidural injections at the Respondent's medical practice. Patients who were identified by other Erie, Pennsylvania area treatment facilities as having Methicillin-resistant *Staphylococcus aureus* (MRSA) infections were confirmed by the Respondent as having received some form of epidural treatment at his medical practice in recent months. (Dept. Ex. 5.)

6. Stipulated facts upon which the final Consent Agreement and Order in Pennsylvania is predicated upon include that, among other things, the Respondent

- a. reused vials of Omnipaque (a contrast dye that does not contain preservatives) that were marked as a "single use bottle";
- b. reused "lost of resistance" syringes that were marked "For single use only. Do not resterilize.";
- c. was not using a current narcotic log in the procedure room;
- d. did not maintain an updated narcotics log as required by the Centers for Disease Control (CDC) since 2015; and
- e. signed off on a medical record of patient R.J. indicating that registered nurse A.A. was present while patient R.J. was under sedation when registered nurse A.A. was in fact not present.

### **VOTE OF THE HEARING COMMITTEE**

The Hearing Committee, by a vote of 3-0, sustains the charge that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(d).

### **HEARING COMMITTEE DETERMINATIONS**

The Respondent has raised several arguments and defenses in this matter. (Tr. pp. 94-103; see also Resp. Ex. A.) As an initial matter, the Respondent argues that the Statement of Charges is invalid as the Pennsylvania order to which it refers has been superseded. An initial disagreement between the parties as to what is the final order from Pennsylvania was the very reason that this hearing was adjourned after it had commenced on May 12, 2012. The Department was made aware of a subsequent order to the one that it initially believed to be final, and that document was substituted as an exhibit in place of the one initially offered by the Department. There is no allegation or content within the Statement of Charges that does not also pertain to the final order from Pennsylvania, including the on or about date of the order referenced in the Statement of Charges. The Respondent is not prejudiced by the Department initiating this proceeding while only having the superseded order in its possession. The Respondent was in possession of the final order prior to the initial hearing date, there was over a month-long adjournment since the initial hearing date for the parties to resolve the issue of which order was in effect in Pennsylvania, the underlying matter resulting in the superseded order and final order was exactly the same, and the Respondent was disciplined by both orders. The final order was the result of a mutual request by the Respondent and Pennsylvania's prosecuting attorney to merely correct a clerical error. Therefore, this argument fails.

The Respondent argues that the Statement of Charges misstates, and relies on the misstatement of, Pennsylvania statutes with respect to immoral or unprofessional conduct. As noted in Footnote 1 above, the Department acknowledged incorrect use of the word "and" instead of the word "or" in its Statement of Charges and verbally amended the Statement of Charges to accurately reflect the relevant Pennsylvania statute on June 6, 2021, more than two weeks prior to the adjourned

hearing date in this matter.

The Respondent also argues that the Department has failed to meet its burden of proof based on the lack of certain admissions by the Respondent and/or lack of evidence presented by the Department. In this direct referral proceeding brought on the basis of discipline in another state, admissions and evidence for the purpose of litigating/proving allegations against the Respondent in another state are not required. (Educ. Law § 65309)(d).)

The Hearing Committee has thoroughly considered the evidence in this matter. It concludes that the conduct resulting in the disciplinary action in Pennsylvania, if committed in New York State, would constitute professional misconduct under the laws of New York State as defined in:

Educ. Law § 6530(2) – Practicing the profession fraudulently or beyond its authorized scope;

Educ. Law § 6530(3) – Practicing the profession with negligence on more than one occasion;

Educ. 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;

Educ. Law § 6530(20) – Conduct in the practice of medicine which evidences moral unfitness to practice medicine; and

Educ. Law § 6530(32) – Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

The Respondent testified as to his board certifications and his extensive education, training and experience. He also testified as to his long-standing ties to New York State and his desire to maintain his license to practice medicine in New York. He expressed that this is of increasing importance to him as he approaches his 72<sup>nd</sup> birthday this year. The Respondent testified in detail about his cooperation with the Pennsylvania Board of Medicine during the investigation into the underlying matter and the numerous steps he has taken to now properly address infection control. He also indicated that his current use of narcotics is “rare” and previously it was “occasional.” The Respondent testified that he has not had any problems with infection control in the four years following the underlying matter.

Dr. Hitt testified as to the Respondent's current practices relating to infection control. He testified that the Respondent's current policies and procedures are "very comprehensive" and are more akin to those one would see with a hospital rather than a private medical practice. Dr. Hitt opined that the Respondent's response to the MRSA infection spread in 2017 shows a commitment to patient safety. The Hearing Committee found helpful the testimony of Dr. Hitt for the purpose of understanding how the Respondent is currently addressing the issue of infection control in his practice. However, that testimony did not alleviate the significant concerns of the Hearing Committee.

The Hearing Committee is extremely troubled by the Respondent's demonstrated lack of insight about the consequences of his past infection control practices. Specifically, the Respondent testified during the hearing that the spread of infection would never have happened had a patient with MRSA not come into his office. (Tr. pp. 51, 61.) This statement belies the Respondent's understanding of and taking full responsibility for the incident. Quite simply, the MRSA outbreak would not have occurred – no matter the condition of the patient presenting for treatment – had the Respondent operated under basic principles of patient safety by not reusing items intended for single use. The Hearing Committee finds that the Respondent willfully dismissed the basic principles of contamination and infection control to put cost-saving tactics above the health and wellbeing of his patients. The Hearing Committee finds the only way to appropriately protect the people of the State of New York is to revoke the Respondent's license.



ORDER

Now, after reviewing the evidence from the hearing, 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 in the State of New York is revoked; and
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: Albany, New York  
July 21, 2021



Steven M. Lapidus, M.D., Chairperson  
Jerry R. Balentine, D.O.  
Paul J. Lambiase

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Joseph Thomas, M.D.  
2374 Village Common Drive, Suite 100  
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## APPENDIX I

Exhibit 2

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

IN THE MATTER

OF

JOSEPH THOMAS, M.D.

STATEMENT  
OF  
CHARGES

JOSEPH THOMAS, M.D. was authorized to practice medicine in New York State on or about July 9, 1982, by the issuance of license number 150785 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about April 12, 2020, the State Board of Medicine for the Commonwealth of Pennsylvania by Order, approved and adopted a Consent Agreement (herein after "Agreement"), after having opened an investigation into the conduct and medical practice of Respondent, due to the fact that nine patients who were recently treated by the Respondent developed MRSA infection, issued a Public Reprimand, imposed a fine of \$5,000.00, costs of \$7,242.84 and required the Respondent to take a total of 25 CME credits with 16 of them dealing with infection control. The Agreement was predicated on the facts, which the Respondent acknowledged, that Respondent: reused single use syringes on multiple patients; reused single dose vials of, a contrasting dye on multiple patients; failed to update his narcotics log since 2015 as required by the CDC Guidelines and kept inadequate and misleading patient records. Said actions were in violation of, the Medical Practice Act §41(8), 63 P.S. §422.41(8), in that Respondent engaged in immoral and unprofessional conduct. Unprofessional

conduct shall include departure from or failing to conform to an ethical or quality standard of the profession.

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 Section 6530(2) (Practicing the profession fraudulently.);
- b) New York Education Law Section 6530(3) (Practicing the profession with negligence on more than one occasion.);
- c) New York Education Law Section §6530(16) (A willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws rules and regulations governing the practice of medicine.);
- d) New York Education Law §6530(20) ("Conduct in the Practice of medicine which evidences moral unfitness to practice medicine.");
- e) 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**


**FIRST SPECIFICATION**

**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(2), (3), (16), (20) and (32) as alleged in the facts of the following:

1. The facts in Paragraph 1 and its subparagraphs.

DATE: April 1, 2021  
New York, New York

  
Henry Weintraub  
Chief Counsel  
Bureau of Professional Medical Conduct