At a Special Term of the Albany County Supreme Court, held in and for the County of Albany, in the City of Albany, New York, on the 27th day of April 2012

PRESENT: HON. PATRICK J. McGRATH
Justice of the Supreme Court

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of
EVANGELOS A. CATSOULIS,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

-against-

DECISION AND ORDER
INDEX NO. 3448-11
April 27, 2012

NEW YORK STATE EDUCATION DEPARTMENT,
Respondent.

APPEARANCES: DAVIDOFF, MALITO & HUTCHER, LLP
For the Petitioner

HON. ANDREW M. CUOMO
Attorney General for the State of New York
(DAVID COCHRAN, ESQ., of Counsel)
For the Respondent

McGRATH, PATRICK J., JSC

In this Article 78 proceeding, petitioner challenges respondent's determination to deny reinstatement of his medical license. Respondent opposes the petition, and petitioner has submitted a Reply.

On January 15, 2002, the Department of Health found petitioner guilty of gross negligence, gross incompetence, and failure to maintain records based on his treatment of "Patient A." The

Department found that petitioner kept this patient on three anti-coagulation medications for a long period of time, which resulted in the patient's hemorrhaging and ultimate death. He was also found guilty of making false entries on the patient's medical record. He was also found guilty of two specifications of fraudulent practice, for completing two employment applications wherein he answered "no" to the question which asked whether he had ever been accused of a crime. On April 14, 1997, he was found guilt of Assault in the Third Degree, which resulted in 30 days of incarceration, three years of probation, and the issuance of an order of protection for the benefit of his wife, daughter and grandson. On August 14, 2002, the petitioner's license to practice medicine was revoked. On March 10, 2006, the petitioner submitted an application for restoration.

In denying the application, Respondent adopted the August 2010 Report of the New York State Education Department's Committee on the Professions ("COP"), which in turn, adopted the May 2008 recommendations endorsed by two of the three members of the Office of Professional Responsibility's Peer Committee.

The August 2010 report noted that petitioner was asked by COP to explain the reasons for his revocation, and exactly what happened on the date of the patient's death. The report states that petitioner could not explain what happened, as there were many people involved and a number of different factors that contributed to the death. He explained that the patient was receiving three anticoagulants for an extended period of time, but that he did not realize the patient was receiving one such drug, Ecotrin, or Lovenox, as he had ordered that Lovenox be discontinued. Despite this order, he stated that the nurse continued to administer Lovenox. He told the Committee that if the drug had been discontinued per his orders, the patient would not have died. He also stated that the hospital pharmacy should have questioned the appropriateness of orders for three anticoagulants. He acknowledged that he did not look at the medication administration record. When asked whether he still placed the blame for the incident on the misconduct of others, he stated that as the physician, he was fully responsible. He went on to point out that the nursing staff failed to carry out his orders, and that the pharmacy had an obligation to alert the hospital staff to the potential danger of the orders being submitted. He said that he was guilty of failing to supervise the residents and the nursing staff. With respect to the charges concerning the medical record, petitioner stated that he was upset by the patient's death (the patient had been a friend as well) and that he just wanted to clarify the record. He stated that since his revocation, he had been studying molecular biology. When asked about the finding of the majority of the Peer Committee that his continuing education was insufficient, he responded that medicine had changed, with a focus shifting to molecular mechanisms of disease, and that he had been studying those changes.

The COP recommendation noted that the concern in restoration cases was the protection of the public. The respondent agreed with COP's assessment that petitioner was unable to explain the cause of the error that resulted in the patient's death. The COP also found that there was no clear explanation of why he changed the patient's medical record, by adding the word "Lovenox." The record before the Department of Health reveals that petitioner added the word "Lovenox" to his June 14, 1999 order to discontinue subcutaneous heparin. He made this change just after the patient's death on June 24, 1999. The Department found that petitioner had added this word to the note after

the patient's death "to convince others who would review the medical record that [petitioner] was active and knowledgeable about the care that had been provided to Patient A. [Petitioner] modified the medical record in places where the [petitioner] knew the medical record was deficient. The impact of the modifications was an attempt to shift the blame for Patient A's death from over anticoagulation therapy away from [petitioner] and on to the nursing staff."

The respondent also expressed concern that petitioner had been out of practice since 2002. Further, respondent also found that petitioner had not engaged in a comprehensive review program in internal medicine, pharmacology, and risk management/medical record keeping. Respondent affirmed COP's unanimous vote to deny his application for restoration.

Petitioner now argues that the determination was arbitrary and capricious. He claims that respondent ignored the fact that one member of the Peer Committee recommended that he be placed on two years of probation pending further continuing medical education. He states that respondent also ignored a 2007 letter from the Director of Professional Medical Conduct which recommended a series of educational courses that could lead to reinstatement. He claims the respondent did not consider his "complete admission of expression of remorse" when he stated that he was guilty of failing to supervise the staff. Petitioner claims that respondent failed to accept his explanation of the medical record issue, namely, that he was distraught, and merely sought to explain what happened. Finally, that the respondent discounted the reasons behind his choice for continuing education, as well as his numerous re-education activities. He claims that he has provided clear and convincing evidence that the problem which lead to this situation has been addressed and will not happen again.

Respondent argues that it has the power to exercise substantial discretion in the area of professional misconduct and the restoration of a professional license. Nehorayoff v. Mills, 95 N.Y.2d 671, 674 (2001) *citing* Education Law §§ 6510 and 6511. The Court in *Nehorayoff*, *supra*, noted that

> "[R]estoration of such licenses is permissive and is granted only in rare cases where the merit of the applicant is clearly established to the satisfaction of the [Board]. The burden of proof is on the applicant to present evidence so ineluctable in its implications that it would compel affirmative action from a Board which has discretion to restore or to refuse to restore. In exercising that discretion, the Board is not required to weigh or consider any particular factors. As long as the Board's determination is supported by a rational basis, and is neither arbitrary nor capricious, it will not be disturbed."

Id. [Internal quotations and citations omitted].

Respondent argues, and the Court agrees, that Respondent's decision had a rational basis. The Court finds that it was rational for respondent to base their decision on Petitioner's answers concerning the medical record. The record supporting the revocation relied heavily on the credible testimony of a risk manager at the hospital, who witnessed petitioner making the change to the note

after the patient died. She explained that the accepted standard practice for making additions to a medical record is to date the additional entry with the current date and write it as an addendum at the end of the note. To correct an error in an existing note, the accepted practice is to draw a line through the error, write the correction, sign the note and date the correction. Petitioner simply added information to a note already in existence for ten days, and only after the patient died. The Board's concern over petitioner's "explanation" are well-founded.

Further, the Court finds that respondent's determination that petitioner continues to place blame on the nursing staff and the pharmacy to be rationally supported by the record. The record underlying the revocation stated that petitioner acknowledged that he did not read the admitting orders, the order sheets and the medication sheets, which would have revealed that the patient was taking three anticoagulants. His own expert at his revocation hearing testified that as the attending physician, petitioner had the duty to be aware of the daily basis of care and treatment for his patient, and that the patient was receiving the correct medication. The record before the respondent supports its position that petitioner believes his failure stems from his lack of supervision, and that he has not acknowledged his own responsibility in this patient's death.

Finally, it was rational for the respondent to deny reinstatement based on the lack of re-education activities which addressed topics such as risk management and medical record keeping. As these are the issues which formed the basis for his revocation, and it is not irrational to expect re-education in these areas.

Petitioner has failed to establish that the respondent's decision lacked a rational basis. Accordingly, the instant petition is dismissed.

This shall constitute the Decision, Order and Judgment of the Court. This Decision, Order and Judgment is being returned to the attorneys for respondent. All original supporting documentation is being filed with the County Clerk's Office. The signing of this Decision, Order and Judgment shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that rule relating to filing, entry, and notice of entry.

SO ORDERED AND ADJUDGED.
ENTER.

Dated: June 28, 2012
Albany, New York

REDACTED

PATRICK J. McGRATH
Supreme Court Justice

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7/10/12

Papers Considered:

1. Notice of Verified Petition, dated May 17, 2011; Verified Petition, dated May 17, 2011; annexed Exhibits A-E.
2. Answer, dated September 14, 2011; Affirmation, Seth Rockmuller, Esq., dated September 12, 2011 with annexed Exhibtis A-E; Respondent's Memorandum of Law, dated March 19, 2012.
3. Certification of Record.
4. Reply Affirmation, Charles Capetanakis, Esq., dated April 25, 2012.