



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

*Public*

Dennis P. Whalen  
Executive Deputy Commissioner

December 27, 2006

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Patrick Joseph Fahey, M.D.  
7012 S. Utica Avenue  
Tulsa, Oklahoma 74136-3907

Patrick Joseph Fahey, M.D.  
P.O. Box 407385  
Tulsa, Oklahoma 74147

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street, Suite 303  
Troy, New York 12180

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

Dear Parties:

Enclosed please find the Determination and Order (No. 06-309) 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  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

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), 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 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:

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:djh

Enclosure

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

**COPY**

**IN THE MATTER**

**OF**

**PATRICK JOSEPH FAHEY, M.D.**

**DETERMINATION**

**AND**

**ORDER**

BPMC No. 06-309

A hearing for the Respondent, **Patrick Joseph Fahey, M.D.**, was held on December 20, 2006, at the offices of the New York State Department of Health ("the Petitioner"). The proceeding was commenced by means of a Notice of Referral Proceeding and a Statement of Charges, both dated October 25, 2006. Pursuant to Section 230(10)(e) of the Public Health Law, **Donald Cherr, M.D.**, Chairperson, **Alexander M. Yvars, M.D.**, and **William W. Walence, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, 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 did not appear at the hearing, either in person or 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.

2. On May 12, 2006, the Oklahoma State Board of Medical Licensure and Supervision ("Oklahoma Board"), by a Final Order of Permanent Revocation ("Oklahoma Order"), revoked the Respondent's license to practice medicine without the right to reapply and required him to pay costs. The Oklahoma Board held that the Respondent engaged in dishonorable or immoral conduct likely to deceive, defraud or harm the public; engaged in sexual conduct with patients; committed acts of sexual abuse, misconduct or exploitation related to the practice of medicine; abused the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship; failed to maintain an office record for each patient which accurately reflected the evaluation, treatment and medical necessity of treatment; violated state or federal laws or regulations relating to controlled substances; engaged in predatory sexual behavior; wrote false or fictitious prescriptions for controlled or narcotic drugs; prescribed or administered a drug or a treatment without sufficient examination and the establishment of a valid physician-patient relationship; prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice and prescribed such drugs without medical need; engaged in the indiscriminate or excessive prescribing of controlled or narcotic drugs; used false, fraudulent or deceptive statements in documents connected with the practice of medicine; except as otherwise permitted by law, prescribed administered or gave controlled substances and addictive or dangerous drugs to persons who were habitués, addicts or previously drug dependent; and willfully betrayed a professional secret to the detriment of a patient. (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(4) - "Practicing the profession with gross negligence on a particular occasion;"
- New York Education Law Section 6530(5) - "Practicing the profession with incompetence on more than one occasion;"
- New York Education Law Section 6530(6) - "Practicing the profession with gross incompetence;"
- New York Education Law Section 6530(17) - "Exercising undue influence on the patient, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the licensee or of a third party;"
- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;"
- New York Education Law Section 6530(23) - "Revealing of personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient, except as authorized or required by law;"
- New York Education Law Section 6530(31) - "Willfully harassing, abusing, or intimidating a patient either physically or verbally;" and

- 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. Unless otherwise provided by law, all patient records must be retained for at least six years..."

### **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 revoked and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation and/or other disciplinary action would constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge ruled that the Petitioner had satisfied the requirements of law for service of the Notice of Referral Proceeding and the Statement of Charges on the Respondent and that, therefore, the hearing could proceed on the merits despite the absence of the Respondent.

## **BACKGROUND**

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 1.

## **WITNESSES**

For the Petitioner:	None
For the Respondent:	None

## **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, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Hearing Committee findings were unanimous.

1. Patrick Joseph Fahey, M.D., the Respondent, was authorized to practice medicine in New York State on August 30, 1994, by the issuance of license number 197005 by the New York State Education Department (Petitioner's Ex. 4).

The Oklahoma Order is a catalogue of numerous acts of egregious professional misconduct committed by the Respondent. Between 2000 and 2005, the Respondent engaged in sexual relationships that included sexual intercourse with four of his female patients. These relationships ranged in length from eight months to three years. During these sexual relationships, the Respondent provided the patients with prescriptions for large quantities of controlled substances. The Respondent's medical charts do not disclose any medical justification for these prescriptions. In three of the four cases, the Oklahoma Board concluded that there was no legitimate physician-patient relationship between the Respondent and the patient.

The Oklahoma Board held that the Respondent prescribed large quantities of controlled substances to nineteen other patients. There was no evidence in the charts for these patients that there was any medical necessity for these prescriptions. The Oklahoma Board concluded in several of these cases that there was no legitimate physician-patient relationship between the Respondent and the patients.

Over a two-month period, one of these patients, MAW, received from the Respondent prescriptions for 360 dosage units of Hydrocodone, a schedule II controlled drug, and 420 dosage units of two Schedule IV controlled drugs. There was no evidence in the Respondent's charts of a medical need for these medications. Two days after the Respondent wrote the last of these prescriptions, the patient died of acute Hydrocodone intoxication.

Over a two-month period, another of these patients, CWW, received from the Respondent prescriptions for 384 dosage units of Hydrocodone and 578 dosage units of Carisoprodol and Clonazepam, Schedule IV controlled drugs. There was no evidence in the Respondent's charts of a medical need for these medications. Approximately three



weeks after the Respondent wrote the last of these prescriptions, the patient died from the toxic effects of Hydrocodone, Carisoprodol and Acetaminophen.

Over a period of one month, another of these patients, MSW, received from the Respondent prescriptions for 45 dosage units of Methadone and Avinza, Schedule II controlled drugs, and 75 dosage units of Hydrocodone. Four days after the Respondent wrote the last of these prescriptions, the patient died from Methadone toxicity.

The Respondent has totally abrogated his responsibilities as a physician. There is no conceivable reason to impose a penalty less severe than a revocation of his license to practice medicine. His totally irresponsible and dangerous behavior also merits a fine of \$10,000.00.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in New York State is revoked.
2. A fine of \$10,000.00 is imposed on the Respondent. The fine is payable in full within 30 days of the effective date of this Order. Payment must be submitted to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower, Room 1258, Albany, New York 12237. Failure to pay the fine on time will subject the Respondent to all provisions of law relating to debt collection by New York State, including imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits and licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).
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: Rochester, New York  
26 December, 2006



**Donald Cherr, M.D.**  
**Chairperson**

**Alexander M. Yvars, M.D.**  
**William W. Walence, Ph.D.**

# APPENDIX 1

**ORIGINAL**

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

IN THE MATTER

NOTICE OF

OF

REFERRAL

PATRICK JOSEPH FAHEY, M.D.  
CO-06-05-3034-A

PROCEEDING

TO: PATRICK JOSEPH FAHEY, M.D.  
7012 S. Utica Avenue  
Tulsa, OK 74136-3907

PATRICK JOSEPH FAHEY, M.D.  
P.O. Box 407385  
Tulsa, OK 74147

**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 20<sup>th</sup> day of December, 2006, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> 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

*October 25, 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 BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

STATEMENT

OF

OF

PATRICK JOSEPH FAHEY, M.D.

CHARGES

CO-06-05-3034-A

PATRICK JOSEPH FAHEY, M.D., Respondent, was authorized to practice medicine in New York state on August 30, 1994, by the issuance of license number 197005 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 12, 2006, the Oklahoma State Board of Medical Licensure and Supervision (hereinafter "Oklahoma Board"), by a Final Order of Permanent Revocation (hereinafter "Oklahoma Order"), PERMANENTLY REVOKED Respondent's license to practice medicine without the right to reapply and required him to pay costs, based on engaging in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public; engaging in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient; committing an act of sexual abuse, misconduct or exploitation related or unrelated to the licensee's practice of medicine and surgery; abusing the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship; violating any provision of the medical practice act or the rules and regulations of the Board of or an action, stipulation, or agreement of the Board; failing to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient; violating any state or federal law or regulation relating to controlled substances; engaging in predatory sexual behavior; writing a false or fictitious prescription for any drug or narcotic declared by the laws of this state to be controlled or narcotic drugs; prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship; prescribing, dispensing or administering a controlled substance or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards; engaging in the indiscriminate or excessive prescribing, dispensing or administering

of controlled or narcotic drugs; prescribing, dispensing or administering controlled substances or narcotic drugs in excess of the amount considered good medical practice or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need; using any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery; except as otherwise permitted by law, prescribing, selling, administering, distributing, ordering or giving to a habitue or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug; willfully betraying a professional secret to the detriment of the patient.

B. The conduct resulting in the Oklahoma 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);
4. New York Education Law §6530(6) (gross negligence);
5. New York Education Law §6530(17) (exercising undue influence on the patient);
6. New York Education Law §6530(20) (moral unfitness);
7. New York Education Law §6530(23) (revealing of personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient);
8. New York Education Law §6530(31) (willfully harassing, abusing, or intimidating a patient either physically or verbally); and/or
9. 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 Paragraph A and/or B.



**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation and/or other disciplinary action would constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

DATED: *Oct. 25*, 2006  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct