



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Public

November 29, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Porfirio Orta-Rosario, M.D.
1522 Covington Drive
Oshkosh, Wisconsin 54904

Porifiro Orta-Rosario, M.D.
856 Greenwood Court
Oshkosh, Wisconsin 54901

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

RE: In the Matter of Porfirio Orta-Rosario, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.07-267) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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.

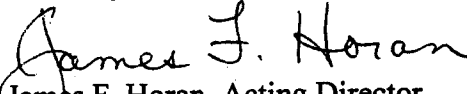
The notice of review served on the Administrative Review Board should be forwarded to:

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,


James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
PORFIRIO ORTA-ROSARIO, M.D.

DETERMINATION

AND

ORDER

BPMC #07-267

A hearing was held on November 14, 2007, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated February 16, 2007, were served upon the Respondent, **Porfirio Orta-Rosario, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Alexander M. Yvars, M.D.**, Chairperson, **Airlie Cameron, M.D., M.P.H.**, and **Ms. Carmela Torrelli**, 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 **Thomas Conway, 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.

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. Porfirio Orta-Rosario, M.D., the Respondent, was authorized to practice medicine in New York State on June 7, 1991, by the issuance of license number 185599 by the New York State Education Department (Petitioner's Ex. 4).

2. On August 16, 2006, the Wisconsin Medical Examining Board, by a Final Decision and Order ("Wisconsin Order"), reprimanded the Respondent, limited his license to practice medicine and required him to pay \$9,000.00 costs of investigation and prosecution, based on his prescribing controlled drugs to patients after Internet and

telephone contact that did not provide reasonable assurance that the patient was accurately identified, needed the medication, and would not divert the medication. The Respondent also signed blank prescription forms knowing that they would be used by others to write prescriptions for controlled substances. The Respondent also gave false information on a medical license renewal form. (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;" and
- New York Education Law Section 6530(21) - "Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so..."

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 disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action 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 Respondent did not appear at the hearing either in person or by counsel. The Administrative Law Judge ruled that Petitioner's Ex. 2 proved that the Notice of Referral Proceeding and the Statement of Charges had been served on the Respondent, that jurisdiction over the Respondent had been established, that there was no legitimate reason for the Respondent's absence, and that the hearing could proceed despite the Respondent's absence.

The Wisconsin Order held that the Respondent had written prescriptions for controlled substances under conditions that did not assure that the patient asking for the prescription had accurately identified himself, that the patient had a medical need for the controlled substance, and that the patient had not sought the controlled substance with the intention to divert the drug. At various times from 2002 through 2004, the Respondent worked for three Internet drug operations that provided controlled substance prescriptions to patients who requested such drugs online. The Respondent wrote controlled drug prescriptions for these patients without ever seeing them and performing physical examinations. His only contact with the patients was by Internet and telephone. At all three organizations, the Respondent was paid a specified amount for each patient who received a prescription from him for a controlled substance, but received no pay for

patients who received no such prescription from him. (One of the three employers did, however, provide a minimum salary of \$800.00 per week).

The Petitioner recommended that the Respondent's license to practice medicine be revoked. This Hearing Committee agrees with the Petitioner. It is outrageously irresponsible to prescribe controlled substances under these circumstances. Not requiring the patient to see the prescribing physician and to submit to a physical examination by him ensured that controlled substances would be obtained by people seeking them under false pretenses. The Respondent's compensation arrangement demonstrates that the Respondent's employers wanted controlled drug prescriptions to be written regardless of medical necessity. Agreeing to write controlled substance prescriptions in such an environment is a grossly negligent decision by the Respondent.

Because the Respondent did not appear at the hearing, he offered no evidence of mitigating circumstances, rehabilitation or remorse. There is nothing in the hearing record that justifies any penalty less severe than a revocation of his license to practice medicine.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Gloversville, New York
11/20, 2007



Alexander M. Yvars, M.D.
Chairperson

Airlie Cameron, M.D., M.P.H.
Carmela Torrelli

APPENDIX I



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

IN THE MATTER
OF
PORFIRIO ORTA-ROSARIO, M.D.
CO-06-10-5577-A

NOTICE OF
REFERRAL
PROCEEDING

TO: PORFIRIO ORTA-ROSARIO, M.D.
• 1522 Covington Drive
Oshkosh, WI 54904

PORIFIRO ORTA-ROSARIO, M.D.
856 Greenwood Court
Oshkosh, WI 54901

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 21st day of March, 2007, 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
February 16, 2007


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
PORFIRIO ORTA-ROSARIO, M.D.
CO-06-10-5577-A

STATEMENT
OF
CHARGES

PORFIRIO ORTA-ROSARIO, M.D., Respondent, was authorized to practice medicine in New York state on June 7, 1991, by the issuance of license number 185599 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 16, 2006, the State of Wisconsin, Medical Examining Board (hereinafter "Wisconsin Board"), by a Final Decision and Order (hereinafter "Wisconsin Order"), inter alia, REPRIMANDED Respondent, LIMITED his license to practice medicine, and required him to pay \$9,000.00 costs of investigation and prosecution, based on prescribing controlled drugs to patients as a result to of internet and telephone contact through conditions that do not provide reasonable assurance that the purposed patient is in fact the person who is receiving the medication or that he or she continues to need the medication or that the medication is not intended for diversion, signing blank prescriptions forms knowing that they would be used by others to prepare prescription orders for controlled substance and then issued to a pharmacy without his receiving and approving them; and by falsely completing a medical license renewal form.

B. The conduct resulting in the Wisconsin Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following section 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); and/or
3. New York Education Law §6530(21) (making or filing a false report required by law or by the department of health or the education department).