



Public
**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

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

Richard F. Daines, M.D.
Commissioner

July 31, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Chiman I. Patel, M.D.
36 Old Bethel Road
Newtown, Connecticut, 06470

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 Chiman I. Patel, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-162) 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), 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 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.

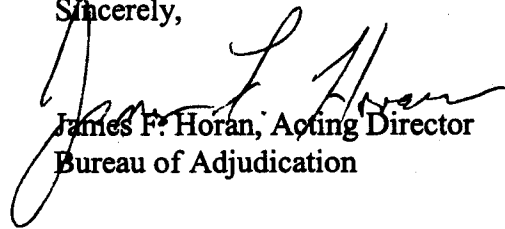
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., 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:djh

Enclosure

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

COPY

DETERMINATION

AND

ORDER

IN THE MATTER
OF
CHIMAN I. PATEL, M.D.

BPMC NO. 07-162

A hearing was held on July 18, 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 March 8, 2007, were served upon the Respondent, **Chiman I. Patel, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Peter B. Kane, M.D.**, Chairperson, **Eleanor Kane, M.D.**, and **Ms. Robin B. Frank**, 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 appeared in person and was represented by O'Connor, O'Connor, Bresee & First, **P. Baird Joslin, Esq.**, of 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:

Chiman I. Patel, M.D.

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. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Chiman I. Patel, M.D., the Respondent, was authorized to practice medicine in New York State on February 23, 1988, by the issuance of license number 173676 by the New York State Education Department (Petitioner's Ex. 5).

2. On September 19, 2006, the Connecticut Department of Public Health, Healthcare Systems Branch, ("Connecticut Board"), by a Consent Order ("Connecticut Order"), reprimanded the Respondent, permanently restricted his medical license in that

he can never be employed in a private freestanding facility for the treatment of substance abusive or dependent persons, imposed a \$3,000.00 civil penalty, placed him on probation on terms that included the completion of courses in prescribing practices and ethics, based on improper delegation of medical tasks to a subordinate and improper prescription of medications. (Petitioner's Ex. 6).

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;" and
- New York Education Law Section 6530(33) - "Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee..."

The New York State Statement of Charges also alleged that the Respondent's conduct, had it occurred in New York State, would have constituted professional misconduct pursuant to:

- New York Education Law Section 6530(4) - "Practicing the profession with gross negligence on a particular occasion;" and
- New York Education Law Section 6530(25) - "Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them..."

The Hearing Committee concludes, for the reasons stated in the Hearing Committee Determination section of this Determination and Order, below, that the hearing record

does not support a finding against the Respondent under Education Law Section 6530(4) or Education Law Section 6530(25).

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 Connecticut Board’s findings against the Respondent in the Connecticut Order focus primarily on the conduct of the Respondent as clinical director at Fresh Start Substance Abuse Services in Bridgeport, Connecticut from June of 2003 to February of 2006. During that time, the patient care provided by the Respondent consisted primarily of treatment of substance abuse patients with a medication named Subuxone. During the time that the Respondent was employed at Fresh Start, Mr. George Stowe, a licensed practical nurse (“LPN”), was also an employee. During that time period, the Respondent,

who did not hire Mr. Stowe, assumed that he was a registered nurse ("RN"). The Respondent never verified this assumption.

The Respondent was present at Fresh Start on Tuesday evenings, Saturday mornings and often on Saturday afternoons. During Monday through Friday mornings, when patients appeared at Fresh Start for Subuxone treatment, the treatment was provided by Mr. Stowe. During these weekday mornings, the Respondent was available by telephone to provide instructions and guidance to Mr. Stowe and to speak to patients, but nobody was present at Fresh Start to provide supervision to Mr. Stowe. During these weekday mornings, Mr. Stowe initiated Subuxone treatment for new patients whom the Respondent had not seen and he monitored patients for adverse reactions to the medication. An LPN is not qualified to perform these medical duties without direct supervision on the premises.

The Connecticut Board also found fault with the Respondent for repackaging Subuxone by combining 2 mg. and 8 mg. tablets in one bottle and putting handwritten labels on the bottle. The Connecticut Board also criticized the Respondent for prescribing medications to two people who were not his patients at the time that the prescriptions were written.

The Hearing Committee agrees with the Petitioner that his delegation of responsibilities to Mr. Stowe constituted negligence. Unlike the situation with an RN, an LPN should not have been allowed to provide Subuxone treatment to substance abuse patients with no onsite supervision from the Respondent. The Respondent also was negligent in his duties as clinical director by his failure to ascertain whether Mr. Stowe was an RN or an LPN. It also was negligent for the Respondent to write prescriptions for the two persons who were not his patients. The Hearing Committee, therefore, sustains the allegation that the Respondent's conducted, had it occurred in New York State, would

constitute negligence on more than one occasion under Education Law Section 6530(3).

The allegation of gross negligence is not supported by the hearing record. A gross negligence finding is justified only in the most egregious cases of negligence. There is no information in the Connecticut Order that supports such a conclusion and the Petitioner during the hearing provided no theory or explanation in support of a gross negligence finding. The allegation of gross negligence pursuant to Education Law Section 6530(4) is not sustained.

The Hearing Committee sustains the allegation that the Respondent's conduct at Fresh Start, had it occurred in New York State, would have been a violation of Education Law Section 6530(33). This statute defines as professional misconduct the failure to supervise appropriately persons authorized to practice only under the supervision of the licensee. The manner in which the Respondent supervised Mr. Stowe at Fresh Start is squarely within this definition.

The Statement of Charges alleges that the Respondent's conduct regarding Mr. Stowe, had it occurred in New York State, would have been professional misconduct under Education Law Section 6530(25). This statute defines professional misconduct as delegating professional responsibilities to someone the licensee knew or had reason to know was not qualified to perform them. Mr. Stowe, an LPN, performed responsibilities that can be performed by an RN, but not by an LPN. The Respondent, however, did not know that Mr. Stowe was an LPN. There also is nothing in the hearing record supporting a conclusion that the Respondent had reason to know that Mr. Stowe was an LPN. As far as this hearing record discloses, there was nothing about Mr. Stowe's conduct, performance or statements to the Respondent that should have disclosed to the Respondent that Mr. Stowe was not an RN. The Respondent, as clinical director at Fresh Start, should have ascertained whether Mr. Stowe was an RN, rather than merely

assuming that he was. Failure to do so contributed greatly to this Hearing Committee's conclusion that the Respondent had been negligent. However, a duty to ascertain whether a fact exists is not the same as reason to know that the fact exists. Failure to investigate whether a fact exists does not put a person in a position to have reason to know that the fact exists; it has the opposite effect. To conclude otherwise is to ignore or distort the meaning of the phrase "reason to know." Therefore, no professional misconduct finding will be made against the Respondent pursuant to Education Law Section 6530(25).

The Petitioner recommended that the Respondent be censured and reprimanded, that his license be restricted so that he cannot be employed in a private freestanding facility for the treatment of substance abusive or dependent persons, and that he be placed on probation with a practice monitor for two years.

The Hearing Committee agrees with the Petitioner that the Respondent's license should be restricted. However, we believe that a broader restriction than that proposed by the Petitioner is warranted. We believe that the Respondent's license should be restricted so that he cannot provide any substance abuse medical services in any situation or any type of facility. We do not see a clear reason for concluding that it would be a danger to allow the Respondent to provide such services in a private substance abuse treatment facility, but not a danger to allow him to provide such services elsewhere.

This Hearing Committee does not think that there is any reason to place the Respondent on probation. The Respondent's problems in Connecticut arose primarily from the manner in which he performed his supervisory duties at Fresh Start. This was the Respondent's first experience as a supervisor. He testified that it was also his last. After observing the Respondent during his testimony, we are convinced that the

Respondent's experience as clinical director at Fresh Start was such a negative experience for him that we can trust his testimony that he would never accept another supervisory position.

Regarding the two persons for whom the Respondent wrote prescriptions despite the fact that they were not his patients, there are mitigating factors that render these events inadequate reasons for placing the Respondent on probation. In both cases, the person was someone known by the Respondent who needed a refill of a medication prescribed by another physician who was unavailable at the time. The Respondent should not have written these prescriptions, but it is understandable how a physician could make a mistake under these circumstances. The Respondent testified that he understood what he did was wrong and the Hearing Committee concludes that it is unlikely that the Respondent will make such a mistake in the future.

The Respondent received a reprimand on his license in the Connecticut Order. The Hearing Committee sees no reason to impose another reprimand in New York.

The Connecticut Order requires the Respondent to complete a medical ethics course approved by the Connecticut Department of Public Health. The Respondent has not yet complied with this requirement. This Determination and Order will require the Respondent to complete this course within six months.

ORDER

IT IS HEREBY ORDERED THAT:

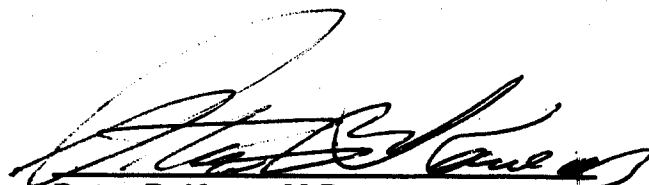
1. The license of the Respondent to practice medicine in New York State is restricted in that the Respondent is prohibited from providing substance abuse medical services.

2. The Respondent is required to complete successfully the medical ethics course required by the Connecticut Order within six months of the effective date of this Determination and Order.

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: Cazenovia, New York

7/30/07, 2007



Peter B. Kane, M.D.
Chairperson

Eleanor Kane, M.D.
Robin B. Frank

APPENDIX I

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



IN THE MATTER

NOTICE OF

OF

REFERRAL

CHIMAN I. PATEL, M.D.
CO-06-10-5582-A

PROCEEDING

TO: CHIMAN I. PATEL, M.D.
36 Old Bethel Road
Newtown, CT 06470

CHIMAN I. PATEL, M.D.
1115 Main Street
Suite 702
Bridgeport, CT 06604

CHIMAN I. PATEL, M.D.
247 Harris Road
Bedford Hills, NY 10507

ChimanIP@hotmail.com

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 19th day of April, 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

March 8, 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 BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
CHIMAN I. PATEL, M.D.
CO-06-10-5582-A

STATEMENT
OF
CHARGES

CHIMAN I. PATEL, M.D., Respondent, was authorized to practice medicine in New York state on February 23, 1988, by the issuance of license number 173676 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 19, 2006, the State of Connecticut, Department of Public Health, Healthcare Systems Branch, (hereinafter "Connecticut Board"), by a Consent Order, (hereinafter "Connecticut Order"), reprimanded Respondent's license to practice medicine, permanently restricted his medical license in that he shall never be employed by or work in a private freestanding facility for the care or treatment of substance abuse or dependent persons however he is not prohibited from prescribing Suboxone to patients in his private practice, imposed a \$3,000.00 civil penalty, and placed his medical license on two (2) years probation under terms and conditions that include, inter alia, that he successfully complete a Mini-Residency in Appropriate Prescribing and an ethics course, based on illegal, incompetent or negligent conduct in the practice of medicine.

B. The conduct resulting in the Connecticut Board's 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);
3. New York Education Law §6530(25) (delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them); and/or
4. New York Education Law §6530(33) (failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee).

SPECIFICATIONS

FIRST SPECIFICATION

MS 07/18/07

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper 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 Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §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, in that Petitioner charges:

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

DATED: *March 8*, 2007
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct