



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 8, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sol Kadish, D.O.
1133 Park Avenue
Apartment 11E
New York, New York 10128

Sol Kadish, D.O.
1001 City Avenue
Suite EC 106
Wynnewood, Pennsylvania 19096

Christopher Walters, Esq.
Reed Smith
2500 One Liberty Place
Philadelphia, Pennsylvania 19103

Teri R. Simon, Esq.
324 Hathaway Lane
Wynnewood, Pennsylvania 19096-1905

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

RE: In the Matter of Sol Kadish, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-245) 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), (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 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.

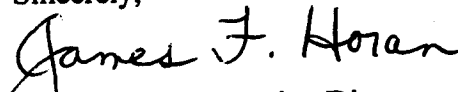
The notice of review served on the Administrative Review Board should be forwarded to:

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:cah

Enclosure

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

COPY

IN THE MATTER
OF
SOL KADISH, D.O.

DETERMINATION
AND
ORDER
BPMC #07-245

A hearing was held on October 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 April 19, 2007, were served upon the Respondent, **Sol Kadish, D.O.** Pursuant to Section 230(10)(e) of the Public Health Law, **Fred S. Levinson, M.D.**, Chairperson, **James T. Adams, M.D.**, and **Randolph H. Manning, 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 **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Reed Smith, Christopher Walters, Esq.**, of counsel, and **Teri R. Simon, Esq.**

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), (c) 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:

Sol Kadish, D.O.

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. Sol Kadish, M.D., the Respondent, was authorized to practice medicine in New York State on September 26, 1960, by the issuance of license number 084971 by the New York State Education Department (Petitioner's Ex. 4).

2. On March 7, 2002, the United States of America, by the United States Department of Justice, by a Settlement Agreement and Release ("USA Agreement"), required the Respondent to pay a \$10,000.00 civil penalty, to comply with the Controlled

Substances Act, to no longer specialize in the treatment of chronic pain, and to no longer prescribe Schedule II and III narcotic medications for pain, based on the Respondent's failure to maintain a biennial inventory of all controlled substances purchased in violation of 21 CFR 1304.11(c) and 21 USC Section 842(a)(5), and his failure to maintain on a current basis a complete and accurate record of each controlled substance handled in violation of 21 CFR 1304.21(a) and 21 USC Section 842(a)(5) (Petitioner's Ex. 5).

3. On December 13, 2006, the Pennsylvania Department of State, State Board of Osteopathic Medicine ("Pennsylvania Board"), by a Consent Agreement and Order ("Pennsylvania Order"), required the Respondent to pay a \$1,000.00 civil penalty, based on the violations set forth in the USA Agreement (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(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..."

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)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to New York Education Law Section 6530..."

VOTE: Sustained (3-0)

THIRD 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

As stated in the USA Agreement and the Pennsylvania Order, the Respondent violated federal law when he was practicing medicine in Pennsylvania. He failed to maintain a biennial inventory of all controlled substances that he purchased in violation of 21 CFR 1304.11(c) and 21 USC Section 842(a)(5). The Respondent also failed to maintain a complete and accurate record of each controlled substance handled, which was a violation of 21 CFR 1304.21(a) and 21 USC Section 842(a)(5).

The Respondent requested that the charges be dismissed in the interests of justice. He argued that the federal government and the Pennsylvania Board had taken action sufficient to address the problem. The Respondent also argued that he could not pose any threat to the public in New York State because he has been retired from the practice

of medicine for four years. He noted that he had never been sued for malpractice and had no problems in his career other than those that are the subject of this proceeding.

This Hearing Committee believes that a dismissal in the interests of justice is not justified by the circumstances of this case. Although the Respondent has not been practicing medicine over the last four years, there is no guarantee that he will never resume his career. His attorney said in his closing statement that the Respondent did not want to foreclose forever the possibility of practicing medicine. Therefore, this Hearing Committee should and will impose a penalty commensurate with the nature and scope of the Respondent's violations of law. The Petitioner recommended that the Respondent's license be limited so that he is prohibited from prescribing Schedule II and III controlled substances. This penalty, which tracks the penalties imposed in the USA Agreement, will be imposed. The Hearing Committee also admonishes the Respondent to comply with the requirements of law regarding Schedule IV and V controlled substances.


ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent is limited such that he is prohibited from prescribing Schedule II and III controlled substances.
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: Middletown, New York

November 7, 2007


Fred S. Levinson, M.D.
Chairperson

James T. Adams, M.D.
Randolph H. Manning, Ph.D.

APPENDIX I

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

EXHIBIT

IN THE MATTER
OF
SOL KADISH, D.O.
CO-07-01-0179-A

NOTICE OF
REFERRAL
PROCEEDING

TO: SOL KADISH, D.O.
1133 Park Avenue
Apt. 11E
New York, NY 10128

SOL KADISH, D.O.
1001 City Avenue
Suite EC 106
Wynnewood, PA 19096

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 22nd day of June, 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

April 19, 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

IN THE MATTER

OF

SOL KADISH, D.O.
CO-07-01-0179-A

STATEMENT

OF

CHARGES

SOL KADISH, D.O., Respondent, was authorized to practice medicine in New York state on September 26, 1960, by the issuance of license number 084971 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 7, 2002, the United States of America, by the United States Department of Justice, (hereinafter "U.S.A."), by a Settlement Agreement and Release (hereinafter "USA Agreement"), inter alia, required Respondent to pay a \$10,000.00 civil penalty; to comply with all provisions of the Controlled Substances Act; as of January 1, 2002, that he no longer specialize in chronic pain; and that he stop prescribing Schedule II and III narcotic medication for pain, based on failure to maintain a biennial inventory of all controlled substances purchased as required by 21 CFR 1304.11(c) and in violation of 21 USC 842(a)(5), and failure to maintain on a current basis a complete and accurate record of each controlled substance handled, as required by 21 CFR 1304.21(a) and in violation of 21 USC 842(a)(5).

B. On or about December 13, 2006, the Commonwealth of Pennsylvania, Department of State, State Board of Osteopathic Medicine, (hereinafter "Pennsylvania Board"), by a Consent Agreement and Order (hereinafter "Pennsylvania Order"), required Respondent to pay a \$1,000.00 civil penalty, based on the violation set forth in Paragraph A above.

C. The conduct resulting in the USA resolution 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(16) failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations).

D. The conduct resulting in the Pennsylvania 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(16) failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations).

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 Paragraphs A, B, C, and/or D.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to New York Education Law §6530, in that Petitioner charges:


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

THIRD 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, constituted professional misconduct under the laws of New York state, in that Petitioner charges:

3. The facts in Paragraphs A, B, C, and/or D.

DATED: *April 19*, 2007
Albany, New York


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