

Public



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

James W. Clyne, Jr.  
Executive Deputy Commissioner

November 20, 2009

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Payton D. Turpin, M.D.

Redacted Address

Robert Bogan, Esq.  
NYS Department of Health  
433 River Street – Suite 303  
Troy, New York 12180-2299

**RE: In the Matter of Payton D. Turpin, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-210) 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,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER  
OF  
PAYTON D. TURPIN, M.D.

DETERMINATION  
AND  
ORDER

BPMC #09-210

**COPY**

A hearing was held on October 22, 2009, 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 August 5, 2008, were served upon the Respondent, **PAYTON D. TURPIN, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Mohammad-Reza Ghazi-Moghadam, M.D., Chairperson, Jerry Waisman M.D., and Frances E. Tarlton**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, 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, **PAYTON D. TURPIN, M.D.**, did appear, *pro se*.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**STATEMENT OF CASE**

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(29) by violating any term of probation or condition or limitation imposed on the licensee. The Petitioner has charged that from on or about November 7, 2005, to the present. Respondent, was and is subject to a Non-disciplinary Order of Conditions Pursuant to §230(13) of the Public Health Law (hereinafter "New York Order"), with the New York State, Department of Health, State Board for Professional Medical Conduct (hereinafter "New York Board"), wherein he was and is required to, *inter alia*, maintain active registration of Respondent's license with the New York Education Department Division of Professional Licensing Services, and shall pay all registration fees. In addition, the Petitioner has charged that from on or about November 7, 2005, to the present, Respondent has failed to maintain active registration of his license with the New York State Education Department and pay all registration fees, in violation of the afore-stated New York Order.

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:

Dr. PAYTON D. TURPIN, 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. PAYTON D. TURPIN, M.D., the Respondent, was authorized to practice medicine in New York State on December 12, 1980, by the issuance of license number 144754 by the New York State Education Department (Petitioner's Ex. 4).

2. On September 28, 2005, the Respondent entered into agreements with the Department wherein he was and is required to, *inter alia*, maintain active registration of Respondent's license with the New York Education Department Division of Professional Licensing Services, and shall pay all registration fees. (Petitioner's Ex. 5).

3. According to the State Education Department, the Respondent has not registered for last eight years as of May 7, 2009. (Petitioner's Ex. 6)

4. The Respondent failed to comply with the above-signed agreement. (Petitioner's Ex. 1).

#### **HEARING COMMITTEE DETERMINATION**

The Respondent did appear at the hearing in person and proceeded *pro se*, notwithstanding the offer of the Judge to adjourn the matter for him to obtain counsel. The Respondent was notified of the hearing, after attempts at personal service failed. The Respondent did not object to the service of the notice and the Administrative Law Judge ruled that there was jurisdiction and the matter proceeded to hearing. (Petitioner's Ex. 3)

The Hearing Committee concludes that the conduct of the Respondent constitutes professional misconduct under the laws of New York State, specifically, New York Education Law Section 6530(29) - "by violating a condition or limitation imposed on him by a consent agreement."

There was no dispute about the fact that the respondent entered into this agreement back in 2005. The Respondent acknowledged that he signed the agreement and that his signature appears on page 3 of Exhibit # 5.

The Respondent was frank and forthright in his testimony and the panel appreciated his candor. The Respondent indicated that he has no intention of practicing in New York and actually wished to surrender his license. (T. 20) The Respondent testified that he has not practiced in New York since 1980. (T. 9) He testified that he had practiced in Maine and after that in Connecticut, where he got in trouble with alcohol and was monitored by Connecticut.

When the Respondent subsequently moved to North Carolina, he reported this monitoring to the local authorities who had him sign a consent agreement for him to practice there and North Carolina published this agreement on the Internet which led to a New York action against him back in 2005. This prior New York action was settled by a Consent Agreement. (Exhibit # 5)

The Respondent did not dispute the fact that he signed the aforesaid agreement in October of 2005. On page 2 of this agreement, the Respondent specifically agreed to maintain active registration of his New York license. (Exhibit # 5)

The record establishes that the Respondent has not maintained his registration. The only explanation that the Respondent could offer was that "he was not very good at long documents." (T. 19)

The Respondent indicated that he would have preferred to just surrender his license but this was not an option. He stated that he was frustrated with the process and did not understand why he just wasn't able to surrender his license non-punitively and continue to practice in other states. Mr. Bogan did his best to explain the Department's practices and procedures.

The Respondent appeared sober and indicated that he had been discharged from monitoring by both Connecticut and North Carolina. (T. 29) Mr. Bogan did not dispute this assertion.

The panel was impressed with the Respondent's recovery from alcoholism and his continued sobriety, as was evidenced by the fact that he has complied with the all the demands that Connecticut and North Carolina have imposed on him. The panel was also impressed with the Respondent's practice of Medicine in the prison system of North Carolina.

Nevertheless, by his own admission, that Respondent has failed to live up to his agreement to keep his New York licensure current and this willful disregard of an obligation warrants, in the unanimous opinion of the panel, some punishment.

The panel determined that a censure and reprimand would be too harsh and decided instead to fine him a monetary sum. If the Respondent pays all his current and back registration fees within 30 days of the service of this Order, the fine will be \$1,000. If all such fees are not paid within 30 days the fine will be \$3,000.

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law Section 6530(29) by violating any term of probation or condition or limitation imposed on the licensee.

VOTE: Sustained (3-0)

#### **ORDER**

**IT IS HEREBY ORDERED THAT:**

1. A fine of \$ 1,000.00 is imposed on the Respondent, if all past and current registration fees are paid within 30 days. If such fees are not paid within 30 days, the fine will be increased to \$3,000.00. 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).
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: Fort Johnson, New York**  
**November 19~~th~~ 2009**

Redacted Signature

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**Mohammad-Reza Ghazi-Moghadam,**  
**M.D., Chairperson**

**Jerry Waisman M.D.**  
**Frances E. Tarlton**

To:

**PAYTON D. TURPIN, M.D.**

Redacted Address

**Robert Bogan, Esq.**  
**Attorney for Petitioner, Associate Counsel**  
**NYS Department of Health, Bureau of Professional Medical Conduct**  
**433 River Street, Suite 303**  
**Troy, New York 12180-2299**



## **Appendix 1**

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



IN THE MATTER  
OF  
PAYTON D. TURPIN, M.D.  
PM-07-12-7057-A

NOTICE  
OF  
HEARING

TO: PAYTON D. TURPIN, M.D.  
Redacted Address

PAYTON D. TURPIN, M.D.  
Redacted Address

**PLEASE TAKE NOTICE:**

A hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on July 23, 2009, 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, and at such other adjourned dates, times, and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A Summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of actual engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of New York Public Health Law §230(10)(c), 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. 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 demands, hereby, 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 that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department Attorney: Initial here

Redacted Signature

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

May 14, 2009

Redacted Signature

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

Inquiries should be directed to:  
Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street - Suite 303  
Troy, NY 12180  
(518) 402-0828

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

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IN THE MATTER  
OF  
PAYTON D. TURPIN, M.D.  
PM-07-12-7057-A

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STATEMENT  
OF  
CHARGES

PAYTON TURPIN, M.D., Respondent, was authorized to practice medicine in New York State on December 12, 1980, by the issuance of license number 144754 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. From on or about November 7, 2005, to the present, Respondent, was and is subject to Nondisciplinary Order of Conditions Pursuant to §230(13) of the Public Health Law (hereinafter "New York Order"), with the New York State, Department of Health, State Board for Professional Medical Conduct (hereinafter "New York Board"), wherein he was and is required to, inter alia, maintain active registration of Respondent's license with the New York Education Department Division of Professional Licensing Services, and shall pay all registration fees.

B. From on or about November 7, 2005, to the present, Respondent has failed to maintain active registration of his license with the New York State Education Department and pay all registration fees, in violation of the New York Order, set forth in Paragraph A, above.

**SPECIFICATION**

Respondent violated New York State Education Law §6530(29) by violating any term of probation or condition or limitation imposed on the licensee, in that Petitioner charges:

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

DATED: *May 14*, 2009  
Albany, New York

Redacted Signature

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