



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Public

February 14, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas Owen Genese, M.D.

REDACTED

Joel E. Ablove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Thomas Owen Genese, M.D.

St. Mary's Hospital – Department of Medicine
56 Franklin Street
Waterbury, Connecticut 06704

Robert S. Asher, Esq.
43 Drake Road
Scarsdale, New York 10583

RE: In the Matter of Thomas Owen Genese, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11- 37) 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

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
THOMAS OWEN GENESE, M.D.

DETERMINATION
AND
ORDER

BPMC #11-37

A hearing was held on January 20, 2011, 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 October 5, 2010, were served upon the Respondent, **Thomas Owen Genese, M. D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **John B. Waldman, M.D.**, Chair, **Arsenio G. Agopovich, 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 **James E. Dering, Esq.**, General Counsel, by **Joel E. Ablove, Esq.**, of Counsel. The Respondent, **Thomas Owen Genese, M.D.**, did appear, with counsel, **Robert S. Asher, Esq.**, of Scarsdale, New York. 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

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 §6530(9)(b) – by having been found guilty of improper professional practice by the Commonwealth of Virginia, and the States of Illinois and Oregon, 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.

The Respondent is also charged with professional misconduct pursuant to Education Law §6530(9)(d) – by surrendering his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the surrender would, if committed in New York State, constitute professional misconduct under the laws of New York State.

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:

Thomas Owen Genese, 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. **Thomas Owen Genese, M.D.**, the Respondent, did appear at the hearing and was duly served with process and was notified of the hearing on October 11, 2010. (Petitioner's Exhibit 2.)
2. **Thomas Owen Genese, M.D.**, the Respondent, was authorized to practice medicine in New York State on May 21, 2008, by the issuance of license number 248735 by the New York State Education Department. (Petitioner's Ex. 3)
3. On or about May 22, 2006, the Virginia Board of Medicine (hereinafter "Virginia Board"), by an Order, (hereinafter "Virginia Order"), *inter alia*, had Respondent permanently surrender his license to practice medicine and surgery in the Commonwealth of Virginia, based on the Respondent violating Sections 54.1-2915.A (1)(3), (13) and (16) of the Code, in that, on or about May 2004, while practicing at the Naval Medical Center, Portsmouth (hereinafter "NMCP"), Portsmouth Virginia, the Respondent documented

thorough physical examination findings in medical records without examining the patients. Further, in response to such conduct, on or about June 24, 2004, Dr. Genese's clinical duties at NMCP were suspended, and, on or about August 10, 2004, he was terminated from the Internal Medicine Residency Training program at NMCP. (Petitioner's Ex. 6)

4. On or about January 11, 2007, the Illinois State Department of Financial and Professional Regulation, Division of Professional Regulation by a Consent Order, (hereinafter "Illinois Order"), REPRIMANDED Respondent, based on the Virginia Order set forth in Paragraph 3, above. (Petitioner's Ex. 5)

5. On or about November 5, 2009, the Board of Medical Examiners, State of Oregon, (hereinafter "Oregon Board") by a Stipulated Order (hereinafter "Oregon Order"), REPRIMANDED Respondent. Respondent withdrew his application for licensure while under investigation and agreed never to apply for a license to practice medicine in Oregon, based on his supplying half-truths on his application for an Oregon medicine license. The Oregon Order noted discrepancies in Respondent's application pertaining to his suspension from clinical duties at the Naval Medical Center, Portsmouth, Virginia (NMCP), his Termination from residency at NMCP, Navy discharge, consent agreement with the Virginia Medical Board, and reprimand against his Illinois medical license. (Petitioner's Ex. 4)

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

"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..."

VOTE: Sustained (3-0)

THIRD AND FOURTH SPECIFICATIONS

"Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension and/or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws New York State...."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing with counsel. The record in this case indicates that Respondent had been authorized to practice medicine in New York State on May 21, 2008, by the issuance of license number 248735 by the New York State Education Department.

At the hearing the Department's attorney presented documentation showing that the Respondent has been disciplined in Virginia, Illinois and Oregon for action that 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(20) (moral unfitness); and/or
3. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

The Oregon and Illinois actions were based on conduct in Virginia and followed from the Virginia Consent Order in the record as Exhibit # 6. According to the Virginia Order, the Respondent was practicing medicine in the United States Navy at the Naval Medical Center in Portsmouth, Virginia in 2004. According to the Virginia Order, the Respondent documented thorough physical examination findings in medical records without examining the patients. For this conduct, the Respondent permanently surrendered his Virginia license. It should also be noted that the Navy instituted disciplinary action for this conduct and Respondent, as a result, resigned from the Navy. (TR. 49)

The Respondent's attorney attempted to relitigate this underlying fact at the present hearing and was prevented from doing so by the Hearing Officer. The Hearing Committee was impressed by the remorse shown by the Respondent. He indicated to the panel that he had made a "stupid mistake". (TR. 45) The panel believed the Respondent when he testified about this error and found him to be contrite and remorseful.

The Hearing Committee was also impressed with his testimonial letters (Exhibits # 8 through #12) and by the evidence of the good work that the Respondent has been doing at Saint Mary's Hospital in Waterbury (Exhibit # 9). The Hearing Committee determined, unanimously, that the Respondent has already been punished for his offense and, while considering the full range of penalties, determined that a Censure and Reprimand and a \$10,000.00 fine would be appropriate in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**
2. The Respondent is hereby Censured and Reprimanded for conduct resulting in the Virginia, Illinois, and Oregon Orders, which would constitute misconduct under the laws of New York State.
3. A fine of \$10,000.00 is imposed on the Respondent, Dr. Thomas Owen Genese, M.D. 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 1717, 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).

4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Slingerlands, New York
February 12, 2011

REDACTED

John B. Waldman, M.D., Chair

Arsenio G. Agopovich, M.D.
Frances E. Tarlton

To: Thomas Owen Genese, M.D.
REDACTED

Thomas Owen Genese, M.D.
St. Mary's Hospital – Department of Medicine
56 Franklin Street
Waterbury, CT 06704

Joel E. Ablove, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

Robert S. Asher, Esq.
Attorney for Doctor Genese
43 Drake Road
Scarsdale, New York 10583

APPENDIX I



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

IN THE MATTER OF THOMAS OWEN GENESE, M.D.
CO-09-11-7328-A

NOTICE OF REFERRAL PROCEEDING

TO: THOMAS OWEN GENESE, M.D.
St. Mary's Hospital
Department of Medicine
56 Franklin Street
Waterbury, CT 06706

THOMAS OWEN GENESE, M.D.
REDACTED

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 17th day of November, 2010, 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, that 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 who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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 that 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. JAMES F. HORAN, ACTING 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 (10) 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 (10) 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 (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) 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 demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here 7

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 (5) 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 5, 2010

REDACTED

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

Inquiries should be addressed to:

Joel E. Ablove
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER
OF
THOMAS OWEN GENESE, M.D.
CO-09-11-7328-A

STATEMENT
OF
CHARGES

THOMAS OWEN GENESE, M.D., Respondent, was authorized to practice medicine in New York state on May 21, 2008, by the issuance of license number 248735 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 22, 2006, the Virginia Board of Medicine (hereinafter "Virginia Board"), by an Order, (hereinafter "Virginia Order"), inter alia, had Respondent permanently surrender his license to practice medicine and surgery in the Commonwealth of Virginia, based on Respondent violating Sections 54.1-2915.A(1)(3), (13) and (16) of the Code, in that in or about May 2004, while practicing at Naval Medical Center Portsmouth (hereinafter "NMCP"), Portsmouth Virginia, he documented thorough physical examination findings in medical records without examining the patients. Further, in response to such conduct, on or about June 24, 2004, Dr. Genese's clinical duties at NMCP were suspended, and on or about August 10, 2004, he was terminated from the Internal Medicine Residency Training program at NMCP. Respondent violated Section 54.1-2915 A(14), in that he is unable to practice medicine with reasonable skill and safety due to illness, based on evaluations while on active duty at NMCP.

B. On or about January 11, 2007, the Illinois State Department of Financial and Professional Regulation, Division of Professional Regulation (hereinafter "Illinois Order"), REPRIMANDED Respondent, base on the Virginia Order set forth in Paragraph A, above.

C. On or about November 5, 2009, the Board of Medical Examiners, State of Oregon, (hereinafter "Oregon Board") by a Stipulated Order (hereinafter "Oregon Order"), reprimanded Respondent and Respondent withdrew his application for licensure while under investigation, and agreed never to apply for a license to practice medicine in Oregon, based on

his supplying "half truths" on his application for an Oregon medicine license. The Oregon Order noted discrepancies in Respondent's application pertaining to his suspension from clinical duties at the Naval Medical Center, Portsmouth, Virginia (NMCP), his Termination from residency at NMCP, Navy discharge, consent agreement with the Virginia Medical Board, and reprimand against his Illinois medical license. The Oregon Order also indicated several incidents of dishonesty which were discovered during the investigation.

D. The conduct resulting in the Virginia 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(20) (moral unfitness); and/or
3. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

E. The conduct resulting in the Illinois 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(9)(d) (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 that state, constitute professional misconduct under the laws of that state).

F. The conduct resulting in the Oregon 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(9)(d) (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 that state, constitute professional misconduct under the laws of that state).

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

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 and/or D.
2. The facts in Paragraphs A, B, C, D, E, and/or F.

THIRD AND FOURTH SPECIFICATIONS

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

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

DATED: *October 5*, 2010
Albany, New York

REDACTED

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