

NEW YORK
state department of
HEALTH

PUBLIC

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

October 6, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Carlos Pena Estiandan, M.D.
#AE 2164
California Institution for Men
P.O. Box 128
Chino, California 91708

RE: In the Matter of Carlos Pena Estiandan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-244) 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., Chief 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
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
OF :
CARLOS PENA ESTIANDAN, M.D. :
CO-09-03-1355-A : ORDER
-----X :
BPMC #11-244

A Notice of Referral Proceeding and a Statement of Charges, both dated June 20, 2011, were served upon the Respondent, Carlos Pena Estiandan, M.D. RAVINDER MAMTANI, M.D. (Chair), LYON M. GREENBERG, and THOMAS W. KING, JR., M.P.A, P.E., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Jude Mulvey, Esq., Associate Counsel. The Respondent failed to appear in person or by Counsel. A hearing was held on August 24, 2011. Evidence was received and witnesses sworn and heard 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 where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d), in that he is accused of having surrendered his license to practice medicine in another jurisdiction after a disciplinary proceeding 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 this state. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Carlos Pena Estiandan, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on December 24, 1981 by the issuance of license number 148955 by the New York State Education Department. (Exhibit #3).

2. On or about September 2, 2009, the Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision effective on September 9, 2009, accepted the surrender of Respondent's license to practice medicine, based on gross negligence, repeated negligent acts, dishonest or corrupt acts, and inadequate records. (Exhibit #4).

3. Disciplinary proceedings were commenced against the Respondent by the California Board on February 10, 2009. (Exhibit #4).

4. Respondent admitted that the California Board could establish a prima facie case for the charges set forth in the Board's Accusation. (Exhibit #4).

5. The California Board found that Respondent committed gross negligence, negligence on more than one occasion, failed to maintain accurate medical records, and engaged in dishonest or corrupt acts, with regard to the medical care and treatment of two patients. (Exhibit #4).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence clearly established that the Respondent surrendered his California medical license following the institution of disciplinary action against him. The Accusation set forth multiple allegations involving the over-prescription of controlled drugs to two patients. The conduct underlying the California Board's action would, if committed in New York State, constitute professional misconduct in violation of New York Education Law §6530(3) [negligence on more than one occasion]; New York Education Law §6530(4) [gross negligence]; New York Education Law §6530(20) [moral unfitness]; and New York Education Law §6530(32) [failing to maintain a record which accurately reflects the evaluation and treatment of the patient]. As a result, Respondent is guilty of professional misconduct, in violation of New York Education Law §6530(9)(d). Therefore, the

Specification of professional misconduct shall be sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that the Respondent's license to practice medicine in New York State shall be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent surrendered his California medical license based upon serious breaches of the standards of the profession. His conduct reflected a lack of due care for the welfare of his patients, as well as a fundamental lack of the moral character expected from a member of the medical profession. Respondent presented no evidence which might mitigate the sanction to be imposed. Under the circumstances, no sanction short of revocation will adequately protect the public.

TO: Jude B. Mulvey, Esq.
Associate Counsel
New York State Department of Health
Corning Tower, Room 2512
Albany, New York 12237

Carlos Pena Estiandan, M.D.
#AE 2164
California Institution for Men
P.O. Box 128
Chino, CA 91708

APPENDIX I

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

IN THE MATTER
OF
CARLOS PENA ESTIANDAN, M.D.
CO-09-03-1355-A

STATEMENT
OF
CHARGES

CARLOS PENA ESTIANDAN, M.D., Respondent, was authorized to practice medicine in New York State on December 24, 1981, by the issuance of license number 148955 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 2, 2009, effective September 9, 2009, the Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision (hereinafter "California Decision"), accepted the surrender of Respondent's license to practice medicine, based on, inter alia, gross negligence, repeated negligent acts, dishonest or corrupt acts, and inadequate records.

B. The conduct resulting in the California 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 State Education Law §6530(3) (negligence on more than one occasion);
2. New York State Education Law §6530(4) (gross negligence);
3. New York State Education Law §6530(32) (failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient); and/or
4. New York State Education Law §6530(20) (moral unfitness).

SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having surrendered his license to practice medicine after a disciplinary proceeding 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, in that the Petitioner charges:

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

DATED: *June 20*, 2011
Albany, New York

REDACTED

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