

October 28, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Ruben Cerri, M.D.
National Pediatric Center
102-11 Roosevelt Avenue
Corona, New York 11368

Ruben Cerri, M.D.
REDACTED ADDRESS

Paul E. Walker, Esq.
Peltz & Walker
222 Broadway
New York, New York 10038

RE: In the Matter of Ruben Walter Cerri, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-260) 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., 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 SIGNATURE

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

IN THE MATTER
OF
RUBEN WALTER CERRI, M.D.
CO-10-11-6955-A

DETERMINATION
AND
ORDER
BPMC #11-260

A hearing was held on September 15, 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 June 22, 2011, were served upon the Respondent, **Ruben Walter Cerri, M.D.**

Pursuant to Section 230(10) (e) of the Public Health Law, **Virginia R. Marty**, Chair, **Mohammad-Reza Ghazi-Moghadam, M.D.**, and **Arsenio Agopovich, M.D.**, 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. Abelove, Esq.**, of Counsel. The Respondent, **Ruben Walter Cerri, M.D.**, did appear, with counsel, **Paul E. Walker, Esq.**, of New York City and was duly served with process. 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 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 and pursuant to Education Law §6530(9)(d) for having his license Suspended by the State of Maryland 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.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 2.

WITNESSES

For the Petitioner: None

For the Respondent: Hector Floriman, M.D. (by phone)
Ruben Walter Cerri, 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. **Ruben Walter Cerri, M.D.**, the Respondent, did appear at the hearing with counsel and was duly served and notified of the hearing on June 28, 2011. (Petitioner's Exhibit 2.)
2. **Ruben Walter Cerri, M.D.**, the Respondent, was authorized to practice medicine in New York State with a limited license on April 11, 2008, by the issuance of license number 003038 by the New York State Education Department. (Petitioner's Ex. 3)
3. On or about October 28, 2010, the Maryland State Board of Physician Quality Assurance (hereinafter 'Maryland Board'), by a Consent Order (hereinafter "Maryland Order"), Suspended Respondent's license to practice medicine for six (6) months, with all

but three (3) months stayed and placed his license on probation for a period of three (3) years without early termination.

4. The Maryland Board required the Respondent to successfully complete a Board-approved comprehensive course or 1:1 tutorial in sexual boundary violations. In addition, the Maryland Order ruled that Respondent shall ensure that a chaperone be present during his examination of all patients and with all mothers of patients (who are present with or without their children) to whom he is providing consultative medical services.

5. The Maryland Order also stipulated that Respondent shall not engage in personal relationships of any kind to include telephone contact, with mothers of his patients or patients of the medical practice. The Consent Order was based on immoral and unprofessional conduct in the practice of medicine, in that Respondent had initiated sexual advances, made inappropriate personal comments, telephone contacts, and touching the mothers of several of his pediatric patients.

6. The conduct resulting in the Maryland Board disciplinary actions 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(20) (moral unfitness).

VOTE OF THE HEARING COMMITTEE

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 Respondent...."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

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

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel. There was no dispute about jurisdiction and the Administrative Officer noted that there was proper service of process. (Petitioner's Exhibit 2) The record in this case indicates that on or about October 28, 2010, the Maryland Board by a Consent Order, Suspended Respondent's license to practice medicine for six (6) months, with all but three (3) months stayed, placed his license on probation for a period of three (3) years without early termination and required that the Respondent successfully complete a Board-approved comprehensive course or 1:1 tutorial in sexual boundary violations. In addition, the Maryland Order ruled that Respondent shall ensure that a chaperone be present during his examination of all patients and with all mothers of patients (who are present with or without their children) to whom he is providing consultative medical services.

The record goes on to show that Maryland ordered the Respondent not to engage in personal relationships of any kind, including telephone contact, with mothers of his patients or patients of the medical practice. The panel noted that this Consent Order was based on immoral and unprofessional conduct in the practice of medicine, in that Respondent had initiated sexual advances, made inappropriate personal comments, telephone contacts, and touching the mothers of several of his pediatric patients.

The panel was unanimous in finding that the actions of the Respondent warranted sanction in New York and determined that probation of the Respondent's New York license,

with monitoring and chaperone safeguards, would be an appropriate and effective protection for New York patients.

Respondent did appear at the hearing and acknowledged his misconduct, admitting an affair with a patient's mother in 2006. The Respondent expressed his remorse and stated that he had learned his lesson and that such conduct would not happen again as mandated education has taught him how to interact with the parents of his patients. Dr. Cerri testified that he has learned not to make any personal comments to the parents of his patients. (T. 12)

The Respondent's New York employer, Dr. Floriman from Queens, New York testified by phone and stated the Respondent has worked with him for three years and there have been no complaints about his practice. Dr. Floriman went on to state that he will re-hire the Respondent once he regains his license. (T. 32)

The panel based its determination on the testimony at the hearing and the documentation in the record and considered the full range of penalties available in this case and determined, unanimously, that a three year probation would be an appropriate penalty. In addition the panel directed that there be a chaperone provided when the Respondent is with female patients and their mothers.

The panel considered the full range of penalties available and was unanimous that probation would be the proper penalty. Accordingly, as to the penalty to be imposed, the Hearing Committee determined that the people of New York State would be protected by a three probation of the Respondent's license, the terms of which are attached herein as Appendix I.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**
2. Respondent is placed on a term of probation of three years. The terms of the probation are attached hereto as Appendix I and are incorporated into this 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: Marcellus, New York

October 26, 2011

REDACTED SIGNATURE

Virginia R. Marty, Chair

Mohammad-Reza Ghazi-Moghadam, M.D.
Arsenio Agopovich, M.D.,

To:

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

Ruben Cerri, M.D.
National Pediatric Center
102-11 Roosevelt Ave.
Corona, NY 11368

Ruben Cerri, M.D.
REDACTED ADDRESS

Paul E. Walker, Esq.
Peltz & Walker
222 Broadway
New York, New York 10038

APPENDIX I

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Throughout the period of probation, Respondent shall practice medicine only when a practice monitor shall be present in his office. The practice monitor shall be on-site during office hours, unless determined otherwise by the Director of OPMC. The practice monitor shall be proposed by the Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall not be a family member or personal friend, or be in a professional relationship, which could pose a conflict with supervision responsibilities.
5. Respondent shall ensure that the practice monitor is familiar with the Order and terms of probation, and be aware of the sexual misconduct issues in this case, and be willing to report to OPMC. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's medical practice and conduct. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC. The practice monitor shall insure that a female chaperone is present whenever the Respondent is treating a female patient or consulting with the child's mother.
6. Respondent shall authorize the practice monitor to have access to patient records and to submit quarterly written reports to the Director of OPMC, regarding Respondent's practice, including, but not limited to procedures for obtaining written consent to procedures and appropriate chaperoning of patients. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, and other such on-duty conduct as the practice monitor deems appropriate to report under the circumstances of this case.

7. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

8. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

9. At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional or program designated by the Director (hereafter "Evaluator.") Respondent shall provide the Evaluator with a copy of this Order and copies of all previous treatment records. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Evaluator. The Evaluator shall report to the Director regarding Respondent's condition and fitness or incapacity to practice medicine. Respondent shall comply with all treatment recommendations based upon the evaluation; failure to comply with such treatment recommendations shall constitute professional misconduct.

APPENDIX 2

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

IN THE MATTER
OF
RUBEN WALTER CERRI, M.D.
CO-10-11-6955-A

NOTICE OF
REFERRAL
PROCEEDING

TO: RUBEN WALTER CERRI, M.D.
National Pediatric Center
102-11 Roosevelt Ave.
Corona, NY 11368

RUBEN WALTER CERRI, M.D.
REDACTED ADDRESS

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 25th day of August, 2011, 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

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

June 22, 2011

REDACTED SIGNATURE

PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Joel E. Abelow
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
RUBEN WALTER CERRI, M.D.
CO-10-11-6955-A

STATEMENT
OF
CHARGES

RUBEN WALTER CERRI, M.D., Respondent, was authorized to practice medicine in New York state on April 11, 2008, by the issuance of license number 003038 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 28, 2010, the Maryland State Board of Physician Quality Assurance (hereinafter "Maryland Board"), by a Consent Order (hereinafter "Maryland Order"), Suspended Respondent's license to practice medicine for six (6) months, with all but three (3) months stayed, placed his license on probation for a period of three (3) years without early termination, required that he successfully complete a Board-approved comprehensive course or 1:1 tutorial in sexual boundary violations. Respondent shall ensure that a chaperone be present during his examination of all patients and with all mothers of patients (who are present with or without their children) to whom he is providing consultative medical services. Respondent shall not engage in personal relationships of any kind to include telephone contact, with mothers of his patients or patients of the medical practice. The Consent Order was based on immoral and unprofessional conduct in the practice of medicine, in that Respondent had initiated sexual advances, made inappropriate personal comments, telephone contacts, and touching the mothers of several of his pediatric patients.

B. The conduct resulting in the Maryland Board disciplinary actions 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(20) (moral unfitness).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) 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:

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

SECOND SPECIFICATION

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

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

DATED: *June 22*, 2011
Albany, New York

REDACTED SIGNATURE

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