

June 12, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

John Stephen Tkach, M.D.
REDACTED

RE: In the Matter of John Stephen Tkach, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-177) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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 : AND
: :
JOHN STEPHEN TKACH, M.D. : ORDER
CO-12-05-2395-A :
-----X

BPMC #13-177

A Notice of Referral Proceeding and Statement of Charges, both dated March 4, 2013, were served upon the Respondent, John Stephen Tkach, M.D. **TREVOR A. LITCHMORE, M.D. (Chair), DAVID B.L. MEZA, III, M.D., and DEBORAH WHITFIELD, M.A., Ph.D.,** 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 Michael G. Bass, Esq., Assistant Counsel. The Respondent failed to appear in person, or by Counsel. A hearing was held on May 16, 2013. 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) 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 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. John Stephen Tkach, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on July 28, 1987 by the issuance of license number 171188 by the New York State Education Department. (Exhibit #3).

2. On or about April 23, 2012, the State of Maine, board of Licensure in Medicine (hereinafter "Maine Board"), in a Consent Agreement for Discipline and Restricted/Conditional License, ("Maine Order"), *inter alia*, reprimanded Respondent and restricted his Maine license to prohibit prescribing any controlled medications, including all opiates and benzodiazepines, for the treatment of chronic pain, except for patients in skilled nursing facilities, patients in hospice care, or patients with metastatic cancer. (Exhibit #4).

3. The Maine Board found that Respondent's prescribing of controlled substances to 74 patients deviated from the standard of care due to a substandard evaluation process. It further found that he failed to document that other treatment modalities had been tried before prescribing controlled drugs for the

treatment of non-malignant pain; failed to have written pain contracts with the patients, and deviated from the standards of medical record-keeping. (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 established that Respondent was disciplined by the Maine Board, following an extensive investigative process. Respondent's conduct, had it occurred within New York State, would have constituted professional misconduct in violation of New York Education Law §6530(3) [negligence on more than one occasion]; and §6530(32) [failure to maintain a record which adequately documents the evaluation and treatment of the patient]. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(d). As a result, the Hearing Committee voted to sustain the specification of professional misconduct.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine should 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 demonstrated serious deficiencies in his treatment of dozens of patients with controlled substances. Despite notice of the Department's proposed action, Respondent failed to appear in person, or to submit any evidence which might mitigate the sanction to be imposed. Under the circumstances, the Committee unanimously concluded that revocation was the only appropriate sanction for the misconduct committed by Respondent.

TO: Michael G. Bass, Esq.
Assistant Counsel
New York State Department of Health
Corning Tower - Room 2512
Albany, New York 12237

John Stephen Tkach, M.D.

REDACTED

APPENDIX I

IN THE MATTER

STATEMENT

OF

OF

JOHN STEPHEN TKACH, M.D.
CO-12-05-2395-ACHARGES

JOHN STEPHEN TKACH, M.D., Respondent, was authorized to practice medicine in New York state on or about July 28, 1987, by the issuance of license number 171188 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 23, 2012, the State of Maine, Board of Licensure in Medicine (hereinafter "Maine Board"), in a CONSENT AGREEMENT FOR DISCIPLINE AND RESTRICTED/CONDITIONAL LICENSURE, (hereinafter "Maine Order"), *inter alia*, Reprimanded Respondent and restricted Respondent's license from prescribing any controlled medications, including all opiates and benzodiazepines, except for the treatment of chronic pain except for patients in skilled nursing facilities or long-term care facilities, patients in hospice care or patients with metastatic cancer. In the STATEMENT OF FACTS of the Maine Order, the Maine Board found, *inter alia*, that an outside expert opined that Respondent committed a clear violation of the standard of care of 74 patients due to a very substandard evaluation process for the general assessment of a medical patient, failing to record subjective and objective data to support any of Respondent's decision making and failing to consistently document the discontinuation and/or initiation of medications.

B. The conduct resulting in the Maine 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 Sec. 6530(3) (negligence on more than one occasion) and/or;
2. New York Education Law Sec. 6530(32) (failure to maintain a record).

SPECIFICATION

Respondent violated New York Education Law Sec. 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, in that Petitioner charges:

1. The facts in Paragraphs A and B.

DATED: *Mar 4*, 2013
Albany, New York

REDACTED

PETER D VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct