

July 29, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Tone Johnson, Jr., M.D.

ADDRESS REDACTED

Re: License No. 149548

Dear Dr. Johnson:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 14-190. This order and any penalty provided therein goes into effect August 5, 2014.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.

If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518)402-0855.

Sincerely,

SIGNATURE REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

IN THE MATTER
OF
TONE JOHNSON, JR., M.D.

MODIFICATION
ORDER

Upon the proposed Application for a Modification Order of, **TONE JOHNSON, JR., M.D.**
(Respondent), that is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms, are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, or upon facsimile or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 7/25/2014

SIGNATURE REDACTED

Arthur S. Hengerer, M.D.
Chair
State Board for Professional
Medical Conduct

**IN THE MATTER
OF
TONE JOHNSON, JR., M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

Tone Johnson Jr., M.D., represents that all of the following statements are true:

That on or about April 16, 1982, I was licensed to practice as a physician in the State of New York, and issued License No. 149548 by the New York State Education Department.

My current address is **ADDRESS REDACTED**,

and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to BPMC Order # BPMC 13-217 (Attachment I) (henceforth "Original Order"), which was issued following a hearing held on June 20, 2013. I hereby apply to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows: to delete the paragraph on page 7 in the Original Order that states:

Respondent's license to practice medicine in New York State be and hereby is placed on probation for a period of THREE (3) years from the effective date of this Determination. The complete terms of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein

and substituting for the above paragraph:

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; this application shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board accepts my Surrender of License, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender Order, this agreement, and all attached exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website(s). OPMC shall report this action to the National Practitioner Data Bank, the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

All remaining Terms and Conditions will continue as written in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I knowingly waive my right to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE

7/15/14

SIGNATURE REDACTED

STONE JOHNSON, JR., M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 21 July 2014

SIGNATURE REDACTED

JUDE BREARTON MULVEY
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 7/25/14

SIGNATURE REDACTED

~~FOL~~_____
KEITH W. SERVIS
Director
Office of Professional Medical Conduct

Attachment I

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

COPY

-----X
IN THE MATTER : DETERMINATION
OF :
TONE JOHNSON, JR., M.D. : AND
CO-12-06-3179-A : ORDER
-----X
BPMC #13-217

A Notice of Referral Proceeding and Statement of Charges, both dated May 1, 2013, were served upon the Respondent, Tone Johnson, Jr., M.D. C. DEBORAH CROSS, M.D. (Chair), EDMUND A. EGAN, II, and JAY A. ZIMMERMAN, 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 Jude B. Mulvey, Esq., Associate Counsel. The Respondent appeared pro se. A hearing was held on June 20, 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)(a)(d) [having disciplinary action taken after a disciplinary proceeding was instituted by the duly authorized professional disciplinary agency of another 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. Tone Johnson, Jr., M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on April 16, 1982 by the issuance of license number 149548 by the New York State Education Department. (Exhibit #3).

2. On or about June 8, 2012, the State of Texas, Texas Medical Board, ("Texas Board"), ordered that Respondent's practice of medicine shall be monitored by a practice monitor for twelve consecutive monitoring cycles, Respondent must take and successfully complete the Special Purpose Examination within one year, and must complete continuing medical education courses in the areas including billing, risk management, office management, supervision of midlevel providers and medical record keeping within one year of entry of the order. The Texas discipline was based upon, among other issues, Respondent's failure to follow up on a patient's elevated glucose levels, failure to perform and/or

document patient history or evaluations, failure to maintain adequate patient records, failure to supervise a nurse and inaccurate or inappropriate billing for services not provided. (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 upon a mediated order, following the institution of a disciplinary action by the Texas Board. The Texas Board's action was predicated upon actions which would have constituted negligence on more than one occasion, as well as the failure to maintain accurate medical records. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(d). Accordingly, the Hearing Committee voted to sustain the First Specification of professional misconduct set forth in the Statement of Charges.

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 shall be placed on

probation for a period of three years. During that period, Respondent shall practice medicine only when his practice is monitored by a physician approved in advance by the Director of the Office of Professional Medical Conduct. In addition, Respondent shall be required to comply with all terms and conditions imposed upon him by the Texas Board through the Mediated Order, as may be modified with the consent of the Texas Board and Respondent. The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein. 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.

In considering the sanction to be imposed, the Hearing Committee took a number of factors into consideration. Although the Texas Board action revealed some deficiencies in his management of two patients, the issues involved were relatively minor. For example, it was error not to document awareness of one patient's elevated blood glucose of 217. However, given that the patient was known to Respondent as a diabetic, the error was not overly significant.

We also took note of the fact that Respondent has previously been disciplined, by the Texas Board, and subsequently

by the Department. In the first instance, Respondent was reprimanded by Texas regarding management issues at a methadone clinic which he operated. The second discipline involved minor deficiencies concerning Respondent's treatment of a single patient. (See, Exhibits # 5 and #6, re-designated ALJ Exhibits #1 and #2).

We also took note of the fact that the Texas Board has not revoked Respondent's medical license. Instead, they have instituted measured increments of supervision and re-examination.

Respondent has demonstrated some compliance with the terms of the Mediated Agreed Order, but not all. He indicated at the hearing that he was trying to work with the Texas Board to modify those terms with which he is having difficulty. We take him at his word on that matter, but believe it imperative that he fully comply with the requirements of the Texas Order.

In addition, the Texas actions have revealed some deficits in Respondent's medical care and record-keeping. We therefore determined that in the event Respondent chooses to return to New York to practice, he shall be required to have a practice monitor for a period of three years. We see evidence that Respondent needs additional training and additional supervision. We found no evidence which suggested that Respondent presents such a danger to the public that revocation

is the answer.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is placed on probation for a period of THREE (3) YEARS from the effective date of this Determination. The complete terms of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein;

4. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Elmsford, New York
July 15, 2013

SIGNATURE REDACTED

C. DEBORAH CROSS, M.D. (CHAIR)

EDMUND A. EGAN, II, M.D.
JAY A. ZIMMERMAN, Ph.D.

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

Tone Johnson, Jr., M.D.

ADDRESS REDACTED

Tone Johnson, Jr., M.D.

ADDRESS REDACTED

APPENDIX I

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

IN THE MATTER
OF
TONE JOHNSON, JR., M.D.
CO-12-06-3179-A

STATEMENT
OF
CHARGES

TONE JOHNSON, JR., M.D., Respondent, was authorized to practice medicine in New York state on April 16, 1982 by the issuance of license number 149548 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 8, 2012, the State of Texas, Texas Medical Board, (hereinafter "Texas Board"), by Mediated Agreed Order (hereinafter "Texas Order"), ordered that Respondent's practice of medicine shall be monitored by a practice monitor for twelve consecutive monitoring cycles, Respondent must take and successfully complete the Special Purpose Examination within one year, and must complete continuing medical education courses in the areas including billing, risk management, office management, supervision of midlevel providers and medical record keeping within one year of entry of the order. The Texas discipline was based upon, among others, Respondent's failure to follow up on patients elevated glucose levels, failure to perform and/or document patient history or evaluations, failure to maintain adequate patient records, failure to supervise a nurse and inaccurate or inappropriate billing for services not provided.

B. The conduct resulting in the Texas 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(3) (negligence on more than one occasion)
2. New York Education Law §6530(32) (failure to maintain adequate records).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York State Education Law §6530 (9)(d) by having disciplinary action taken after disciplinary action was instituted 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 of New York state, in that Petitioner charges:

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

DATED: *May 1*, 2013
Albany, New York

SIGNATURE REDACTED

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

EXHIBIT "B"

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Licensee shall destroy all prescription pads bearing Licensee's name. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law §

230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.