

PUBLIC

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

July 19, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Tone Johnson, Jr., M.D.
REDACTED

Tone Johnson, Jr., M.D.
REDACTED

RE: In the Matter of Tone Johnson, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-217) 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. 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 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
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
TONE JOHNSON, JR., M.D. : ORDER
CO-12-06-3179-A :
-----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

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.
REDACTED

Tone Johnson, Jr., M.D.
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 §8530 (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

REDACTED

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

APPENDIX II

Tone Johnson, Jr., M.D. - 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/her 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), Riverview Center, 150 Broadway, Menands, New York 12204; 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. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the 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 or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. 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 the 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.
6. Respondent's professional performance may be reviewed by the Director of the 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 staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall comply fully with the June 8, 2012 Mediated Agreed Order of the Texas Medical Board, and any extension or modification thereof. Respondent shall provide a written authorization for the Texas Medical Board to provide the Director of the OPMC with any/all information or documentation as requested by OPMC to determine whether Respondent is in compliance with the Texas Order. Respondent shall submit quarterly a signed Compliance Declaration to the Director of the OPMC, which truthfully attests whether Respondent has been in compliance with the Mediated Agreed Order during the declaration period specified.
9. Within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of the OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 10) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of the OPMC prior to Respondent's practice after the effective date of this Order.
10. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of the OPMC and/or the Board may initiate violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.