

November 13, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard Ostreich, M.D.

REDACTED

Daniel J. Hurteau, Esq.
Nixon, Peabody, LLP
677 Broadway – 10th Floor
Albany, New York 12207Paul Tsui, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237**RE: In the Matter of Richard Ostreich, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 13-375) 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

IN THE MATTER
OF
RICHARD OSTREICH, M.D.
CO-12-03-1654-A

DETERMINATION
AND
ORDER
BPMC #13-375

COPY

A hearing was held on September 19, 2013, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges dated June 13, 2013, were served upon the Respondent, **Richard Ostreich, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Jerry Waisman**, Chairperson, **Elisa J. Wu, M.D.**, and **Paul J. Lamblase**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **William J. Lynch, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Paul Tsui, Esq.**, of Counsel. The Respondent appeared at the hearing and was represented by **Nixon Peabody, LLP**, by **Daniel J. Hurteau, Esq.**, of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

~~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 Section 6530(9)(b) and 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Richard Ostreich, 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. Richard Ostreich, M.D., the Respondent, was authorized to practice medicine in New York State on March 11, 1983, by the issuance of license number 153496 by the New York State Education Department (Petitioner's Ex. 3).

2. On or about June 9, 2011, the Board of Medical Licensure of the Commonwealth of Kentucky ("Kentucky Board") received a complaint alleging that Respondent was inappropriately prescribing controlled substances. The Kentucky Board subpoenaed twenty-four of Respondent's patient charts which were forwarded to a consultant for review. The consultant concluded that Respondent's diagnoses, treatment and recordkeeping departed from or failed to conform to acceptable and prevailing medical practices for each of the charts in which treatment for chronic pain with controlled substances was documented. The consultant also found that Respondent demonstrated gross ignorance, gross negligence, and/or gross incompetence in his prescription of controlled substances to one of those patients (Petitioner's Ex. 4, Respondent's Ex. B).

3. On or about March 6, 2012, the Kentucky Board in an Agreed Order of Indefinite Restriction made a stipulated conclusion of law that Respondent had engaged in conduct which violated the provisions of Kentucky Revised Statutes ("KRS") 311.595(9), which is defined as having "[e]ngaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof." The Kentucky Board took the disciplinary action of restricting/limiting Respondent's license for an indefinite period of time to prohibit him from prescribing, dispensing, or otherwise professionally utilizing controlled substances unless and until approved by the Kentucky Board Panel or the Panel Chair to do so. In addition, the Kentucky Board required that Respondent complete a clinical skills assessment in the

specialty of pain management; arrange for the development and implementation of an Educational Plan if recommended by the assessment; and reimburse the Board for the cost of the investigation (Petitioner's Ex. 4, Respondent's Ex. B).

4. Respondent completed the clinical skills assessment which found that his knowledge of pain management was inadequate and that his clinical judgment and reasoning were variable but inadequate overall. Respondent, however, failed to arrange for the development and implementation of an Educational Plan as required by the Agreed Order of Indefinite Restriction (Petitioner's Ex. 4, Respondent's Ex. B).

5. By letter dated June 27, 2012, Respondent told the Kentucky Board that his dismissal from employment caused a financial hardship which forced him to retire and prevented him from complying with the terms of the Agreed Order of Indefinite Restriction (Respondent Ex. C).

6. By letter dated August 13, 2012, the Kentucky Board advised Respondent that being placed in inactive status was not an option under the terms of the Agreed Order of Indefinite Restriction. In an Agreed Order of Surrender dated August 22, 2012, Respondent surrendered his Kentucky medical license to the Kentucky Board (Petitioner's Ex. 4, Respondent's Ex. B).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concluded that the conduct that resulted in the Kentucky Board disciplinary action against Respondent would constitute misconduct under the laws of New York as having practiced the profession with negligence on more than one occasion (New York Education Law section 6530[3]), having practiced the profession with gross negligence on a particular occasion (New York Education Law 6530[4]), and having failed

to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (New York Education Law section 6530[32].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York State Education Law Section 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.

VOTE: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated New York State Education Law Section 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.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

Respondent indicated that he started practicing medicine in 1984 in the field of obstetrics and gynecology and continued in that area of practice in New York until December 2007. His resume indicates that he took a "Leave of Absence from practice, search for new practice opportunity" during the period from January to July 2008 (T. 24-25; Respondent's Ex. A). Respondent testified that he left his position in the field of obstetrics

and gynecology in December 2007 because his commute to Mount Vernon, New York took two to three hours each way which was taking a toll on his health (T. 26).

After an eight month leave from medical practice, Respondent took a position in the field of obstetrics and gynecology in West Valley City, Utah, and he continued there for seventeen months. He testified that he left that practice because he disagreed with the office policy which did not attempt to schedule patients with the same physician during their course of care and because the clinic was unhappy that he wanted to refer patients to outside radiologists (T. 27). When he left that position, Respondent did not practice medicine from January 2010 until September 2010 (Respondent's Ex. A).

In October 2010, Respondent stated that he took a position in a pain management and bariatric medicine center in Winchester, Kentucky, and he acknowledged that he had concerns about the practice when he started working there. In June 2011, Respondent became aware that his practice of medicine was being investigated by the Kentucky Board. On or about March 6, 2012, Respondent entered into the Agreed Order of Indefinite Restriction, and he subsequently completed a clinical skills assessment in the specialty of pain management as directed. However, Respondent did not arrange for the development and implementation of an Educational Plan as recommended by the assessment, stating he could not afford the expense after being dismissed from his employment (T. 29-37; Respondent's Ex. A).

Respondent testified that he has tried to find a job since May 2012 by looking for positions on the internet, but he decided not to take a position because New York had commenced an investigation. During this period, he has received unemployment benefits

(T.44-45). He further testified that he volunteered for Nassau County Medical Reserve Corps at a Long Island marathon and a senior citizen picnic (T. 46).

Based on Respondent's testimony at the hearing, the Hearing Committee concluded that Respondent failed to show remorse for his past medical practice in Kentucky which was considered to have demonstrated that Respondent's diagnoses, treatment and recordkeeping for several patients departed from or failed to conform to acceptable and prevailing medical practices and to have demonstrated gross ignorance, gross negligence, and/or gross incompetence in his prescription of controlled substances to one of those patients. When asked by his attorney whether he had any remorse for his conduct, Respondent initially answered, "Yes, I fully understand what Kentucky did." He proceeded, however, to testify that he was sorry that this happened, but denied having a part in the inappropriate prescription of controlled substances and stated that he was trying to help patients (T. 50).

Respondent's further testimony was evasive and shifted responsibility for his misconduct onto his colleagues and his patients. When a panel member asked Respondent if he had done anything wrong with regard to the patients in Kentucky, Respondent replied, "In the fact that I was given poor advice initially, I may have contributed a little to it, but I did attempt to make many changes when I realized what was happening" (T. 54).

Having heard and considered Respondent's testimony, the Hearing Committee concludes that Respondent lacks any insight into the deficiencies of his medical practice and that he has offered no evidence of rehabilitation. Respondent's negligent practice of medicine coupled with his failure to show remorse or accept responsibility for his mistakes persuades the Hearing Committee that future patients would be at risk if Respondent is

permitted to resume practice in this State. Therefore, the Hearing Committee has determined that his license to practice medicine in this State must be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice medicine in the State of New York is revoked;
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: New York, New York
Nov. 7, 2013

REDACTED

~~Jerry Walsman~~
Chairperson

Elisa J. Wu, M.D.
Paul J. Lambiase

APPENDIX I

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

IN THE MATTER	NOTICE OF
OF	REFERRAL
RICHARD OSTREICH, M.D.	PROCEEDING
CO-12-03-1654-A	

TO: Richard Ostreich, M.D.
REDACTED

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 19th day of September, 2013, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

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, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, 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 17. 2013

REDACTED

MICHAEL A. HISER
Acting Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Paul Tsui
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
RICHARD OSTREICH, M.D.
CO-12-03-1654-A

STATEMENT
OF
CHARGES

RICHARD OSTREICH, M.D., Respondent, was authorized to practice medicine in New York State on March 11, 1983, by the issuance of license number 153496 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 6, 2012, the Commonwealth of Kentucky, Board of Medical Licensure (hereinafter "Kentucky Board"), by an Agreed Order of Indefinite Restriction (hereinafter "Kentucky Order"), restricted Respondent's license to practice medicine for an indefinite period of time, based on Respondent, whose medical specialty is Pain Management, failing to conform to minimal standard standards of acceptable practice, gross negligence and excessive prescribing with respect to the care of 24 patients including 10 employees of Kentucky Bariatric & Pain Management. Upon review of the patient charts, it was concluded that Respondent's diagnoses, treatment and recordkeeping departed from or failed to conform to acceptable and prevailing medical practices. One of the restrictions imposed on Respondent's license included the development and implementation of a CPEP Educational Intervention Plan.

B. On or about August 22, 2012, by an Agreed Order of Surrender, Respondent surrendered his license to practice medicine citing his inability to satisfy the requirement of the CPEP Educational Intervention Plan rather than risk non-compliance with the Agreed Order of Indefinite Restriction. Respondent claimed he could not satisfy the CPEP requirement because his employment with Kentucky Bariatric & Pain Management was "unexpectedly terminated under false pretenses."

C. The conduct resulting in the Kentucky 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 §6530(3) (Practicing the profession with negligence on more than one occasion).
2. New York Education Law §6530(4) (Practicing the Profession with gross negligence on a particular occasion).
3. New York Education Law §6530(32) (Falling to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

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 Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having disciplinary action taken against his license to practice medicine, or having voluntarily surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action or surrender

would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that the Petitioner charges:

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

DATED: *June 17*, 2013
Albany, New York

REDACTED

MICHAEL A. HISER
Acting Deputy Counsel
Bureau of Professional Medical Conduct