

September 4, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard Ochrym, M.D.
REDACTED

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

RE: In the Matter of Richard Ochrym, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-215) 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

IN THE MATTER
OF
RICHARD OCHRYM, M.D.
CO-13-08-4364A

DETERMINATION
AND
ORDER
BPMC #14-215

COPY

A hearing was held on July 24, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges, both dated May 20, 2014, were served upon the Respondent, **Richard Ochrym, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **William P. Dillon, M.D.**, Chair, **Gail S. Homick Herrling**, and **Trevor A. Litchmore, 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 **Jude B. Mulvey, Esq.**, of Counsel. The Respondent, **Richard Ochrym, M.D.**, did appear, *pro se*, and was duly served. 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. Respondent is also charged pursuant to Education Law §6530(9)(d) for having his license revoked or having other disciplinary action taken by the State of Connecticut 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 1.

WITNESSES

For the Petitioner: None
For the Respondent: Richard Ochrym, 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 Ochrym, M.D.**, the Respondent, did appear at the hearing, *pro se*, and was duly served by personal service on June 2, 2014. (Petitioner's Exhibit 2)
2. **Richard Ochrym, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 5, 1993, by the issuance of license number 193854 by the New York State Education Department. (Petitioner's Exhibit 3)
3. On or about July 16, 2013, the State of Connecticut, Department of Public Health, Healthcare Quality and Safety Branch, Connecticut Medical Examining Board (hereinafter "Connecticut Board"), by a Consent Order (hereinafter "Connecticut Order"), *inter alia*, issued a reprimand to Respondent, ordered Respondent to pay a fine of \$2,000 and placed him on probation until he successfully completes pre-approved coursework in standards of prescribing and documenting controlled substances, and the standards of securing, transporting, documenting and disposing of controlled substances, based on his

prescribing of controlled substances to his wife without adequate documentation, possession of, or dispensing of, various schedule III controlled substances without adequate security or documentation and possession of a class III controlled substance that another physician had prescribed to two of his patients.

4. The conduct resulting in the Connecticut Board's 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); and/or

2. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York State 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...."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York 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 New York state, in that Respondent..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, *pro se*. It is noted that there was no dispute about jurisdiction and the Respondent was personally served with process. (Petitioner's Exhibit 2),

The panel reviewed the extensive documentation from the Connecticut proceedings submitted by the Department. The panel noted the Respondent's different business model for his practice. (T. 10) The Respondent, according to his testimony, has no secretary, office manager or nurse. The Respondent's practice is done in his patients' homes and at various schools in his area of Connecticut which is near the New York border. (T. 11)

At the hearing, the Respondent admitted his storage and dispensing of drugs was wrongful and contrary to the rules of the DEA but stated that he was "honestly ignorant"

(T. 12) of the DEA regulations and stated for the record that he would not dispense drugs again. The Respondent stated that he has learned his lesson by the Connecticut discipline and will no longer give out pills as he has done in the past and, in the future, will only give written prescriptions.

The panel appreciated what this Doctor was trying to do with his different business model and recognized that many patients could be served who would otherwise go without treatment. Nevertheless the panel was concerned that this circuit riding physician crosses over the border into New York state and his informal and sloppy mode of practice would indeed put New York patients at risk.

The panel wanted to insure that this physician's drugs were properly stored and accounted for and that DEA regulations were followed. At the same time, the panel did not want to thwart this Doctor's efforts to bring medicine to an underserved population.

Accordingly, as to the penalty, the Hearing Committee determined that the people of New York state would be protected by a Stayed three year Suspension with a probation that would require a practice monitor to ensure that drugs would be properly administered and stored. The panel also insisted that the Respondent complete 50 CMEs per year in Family Practice during the period of his probation. The panel was satisfied that a monitored probation and a stayed suspension will be adequate protection for the people of the State of New York given the circumstances of this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**
2. The license of the Respondent to practice medicine in New York State is **SUSPENDED** for a period of three years and this Suspension, is **STAYED**. The terms of this Probation are attached hereto as Appendix II.
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: Buffalo, New York

SEPTEMBER
August 3, 2014

REDACTED

William P. Dillon, M.D.

**Gail S. Homick Herrling
Trevor A. Litchmore, M.D.**

To: **Richard Ochrym, M.D.**

REDACTED

Jude B. Mulvey, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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

IN THE MATTER
OF
RICHARD OCHRYM, M.D.
CO-13-08-4364A

NOTICE OF
REFERRAL
PROCEEDING

TO: Richard Ochrym, 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 24th of July, 2014, 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

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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

May 20, 2014

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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 _____

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

IN THE MATTER
OF
RICHARD OCHRYM, M.D.
CO-13-08-4364A

STATEMENT
OF
CHARGES

RICHARD OCHRYM, M.D., Respondent, was authorized to practice medicine in New York State on October 5, 1993, by the issuance of license number 193854 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 16, 2013, the State of Connecticut, Department of Public Health, Healthcare Quality and Safety Branch, Connecticut Medical Examining Board (hereinafter "Connecticut Board"), by a Consent Order (hereinafter "Connecticut Order"), inter alia, issued a reprimand to Respondent, ordered Respondent to pay a fine of \$2,000 and placed him on probation until he successfully completes pre-approved coursework in standards of prescribing and documenting controlled substances, and the standards of securing, transporting, documenting and disposing of controlled substances, based on his prescribing of controlled substances to his wife without adequate documentation, possession of, or dispensing of, various schedule III controlled substances without adequate security or documentation and possession of a class III controlled substance that another physician had prescribed to two of his patients.

B. The conduct resulting in the Connecticut Board's 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);
and/or
2. New York Education Law §6530(32) (failure 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 findings 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 and B.

SECOND SPECIFICATION

Respondent violated New York 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 New York state, in that Petitioner charges:

2. The facts in Paragraphs A and B.

DATED: *MAY 20*, 2014
Albany, New York

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

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), Riverview Center, 150 Broadway, Albany, New York 12204-2719; 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 engage a practice monitor to review, periodically, his prescribing and storing of medications. The practice monitor shall perform this function on a schedule determined 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.
4. Respondent shall ensure that the practice monitor is familiar with the Order and terms of probation, 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.
5. 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.
6. 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.