



**Department
of Health**

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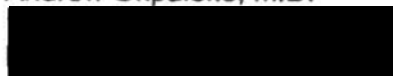
August 18, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Andrew Okpaleke, M.D.



Andrew Okpaleke, M.D.



Paul Tsui, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Andrew Okpaleke, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-205) 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.

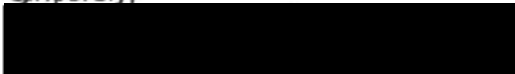
The notice of review served on the Administrative Review Board should be forwarded to:

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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: nm
Enclosure

IN THE MATTER	DETERMINATION
OF	AND
ANDREW OKPALEKE, M.D. CO- 13-12-7577A	ORDER BPMC-15-205

A hearing was held on July 15, 2015 at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated April 27, 2015, were served upon the Respondent, **Andrew Okpaleke, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **William P. Dillon, M.D.**, Chair, **Janet R. Axelrod, Esq.**, and **Jagdish M. Trivedi, 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 **Paul Tsui, Esq.**, of Counsel. The Respondent, **Andrew Okpaleke, M.D.**, did not appear, although duly served by substituted service. 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 with violation New York Education Law §6530(9)(d) by having other disciplinary action taken after a disciplinary action was instituted 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. 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: None

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. Andrew Okpaleke, M.D., the Respondent, did not appear at the hearing and was duly served and notified of the hearing, by substituted service of process, on June 12, 2015. (Petitioner's Exhibit 2.)
2. Andrew Okpaleke, M.D., the Respondent, was authorized to practice medicine in New York State on March 13, 1987, by the issuance of license number 169540 by the New York State Education Department. (Petitioner's Ex. 4)
3. On or about September 18, 2013, the Tennessee Board of Medical Examiners ("Tennessee Board") by Consent Order ("Tennessee Consent Order") disciplined Respondent by, among others, permanently barring Respondent from the practice of pain

management in Tennessee and ordering Respondent to close Bradiake Medical Center in Nashville, Tennessee and to surrender his Pain Management Clinic certificate. This Order also placed Respondent on a five year period of probation with terms including a practice monitor, a prohibition from prescribing Schedule II or III controlled substances, and completion of Continuing Medical Education courses in Controlled Substance Prescribing and Medical Record Keeping. (Petitioner's Ex. 5)

4. The discipline imposed by the Tennessee Consent Order was based upon findings that Respondent violated prohibitions against changing the location of a pain management clinic without notifying appropriate state authorities and failure to obtain a new pain management clinic certificate. The Tennessee Order was also based on inappropriate prescribing practices and failure to maintain adequate patient records, and failure to perform and/or document adequate histories or physical examinations of patients. (Petitioner's Ex. 5)

5. The conduct resulting in the Tennessee Consent Order against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

- a . New York Education Law §6530(3) (negligence on more than one occasion);
- b. New York Education Law §6530(32) (failure to maintain accurate records) and/or
- c. New York Education Law §6530(24) (practicing beyond the scope permitted by law).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

"Respondent violated New York Education Law §6530(9)(b) by having been found

guilty of improper professional practice or conduct 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 other disciplinary action taken after a disciplinary action was instituted 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

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included several Affidavits of Attempted Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2) ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the

Respondent and that the hearing could proceed on the merits notwithstanding the Respondent's absence.

The record in this case indicates that the Tennessee Board of Medical Examiners by Consent Order disciplined Respondent by permanently barring Respondent from the practice of pain management in Tennessee and ordering him to close Bradiake Medical Center in Nashville, Tennessee. In addition, the Tennessee Board ordered the Respondent to surrender his Pain Management Clinic certificate, and placed him on a five year period of probation with terms including a practice monitor, a prohibition from prescribing Schedule II or III controlled substances, and completion of Continuing Medical Education courses in Controlled Substance Prescribing and Medical Record Keeping.

The discipline imposed by the Tennessee Consent Order was based upon findings that, among other things, Respondent engaged in inappropriate prescribing practices and failed to maintain adequate patient records. Furthermore, the record herein shows that the Respondent failed to perform and/or document adequate histories or physical examinations of patients.

It is clear from the documentary record and the evidence submitted at the hearing by the Department that the basis of the Tennessee action was certain conduct that eventually resulted in the Tennessee Board of Medicine taking disciplinary action against Respondent. Respondent did not appear at the hearing, and the record does not contain any evidence of mitigating circumstances or remorse. The panel noted that there were multiple attempts to serve the Respondent personally with notice of this matter and that he was not living at the address on file with the Department. The Administrative Officer ruled that there was due diligence at service and that the Department had met its obligation

under due process. Accordingly, the Respondent was found to be in default and the hearing proceeded to a determination of penalty.

The Department's attorney, Mr. Tsui, stated that, given the nature of the discipline of the Respondent's license in Tennessee, there is no other appropriate outcome in New York State but to revoke the Respondent's license. The panel, unanimously, agreed with the Department on this recommendation. As to the penalty, therefore, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license. Accordingly, the panel decided, unanimously, to revoke the Respondent's license.

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 revoked.
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

August 17, 2015



William P. Dillon, M.D.

Janet R. Axelrod, Esq.
Jagdish M. Trivedi, M.D.,

To:

Andrew Okpaleke, M.D., Respondent

[REDACTED]

Andrew Okpaleke, M.D., Respondent

[REDACTED]

Paul Tsui, 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 1

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

IN THE MATTER
OF
ANDREW OKPALEKE, M.D.
CO-13-12-7577A

NOTICE OF
REFERRAL
PROCEEDING

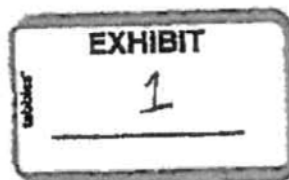
TO: Andrew Okpaleke, M.D. Andrew Okpaleke, M.D.

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 15th day of July, 2015, 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 [REDACTED]


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

April 27, 2015


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

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

IN THE MATTER

OF

ANDREW OKPALEKE, M.D.
CO-13-12-7577A

STATEMENT

OF

CHARGES

ANDREW OKPALEKE, M.D., Respondent, was authorized to practice medicine in New York State on March 13, 1987, by the issuance of license number 169540 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 18, 2013, the Tennessee Board of Medical Examiners ("Tennessee Board") by Consent Order ("Tennessee Consent Order") disciplined Respondent by, among others, permanently barring Respondent from the practice of pain management in Tennessee, ordered Respondent to close Bradlake Medical Center in Nashville, Tennessee and surrender his Pain Management Clinic certificate, and placed Respondent on a five year period of probation with terms including a practice monitor, a prohibition from prescribing Schedule II or III controlled substances, and completion of Continuing Medical Education courses in Controlled Substance Prescribing and Medical Record Keeping. The discipline imposed by the Tennessee Consent Order was based upon findings including that Respondent violated prohibitions against changing the location of a pain management clinic without notifying appropriate state authorities, failed to obtain a new pain management clinic certificate, failed to utilize drug screen and pill counts, inappropriate prescribing practices, failed to maintain adequate patient records, and failed to perform and/or document adequate histories or physical examinations of patients.

9. The conduct resulting in the Tennessee Consent Order against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. Education Law §6530(3) (negligence on more than one occasion);
2. Education Law §6530(32) (failure to maintain accurate records); and/or
3. Education Law §6530(24) (practicing beyond the scope permitted by law).

SPECIFICATIONS OF MISCONDUCT

First Specification

Respondent violated 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:

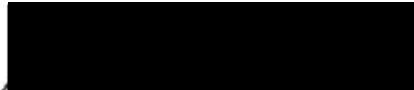
1. The facts in Paragraphs A and B.

Second Specification

Respondent violated Education Law §6530(9)(d) by having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the 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 B.

DATED: *April 27*, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct