



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

November 4, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nasser Nakissa, M.D.



Jillian M. Singer, Esq.
Balestriere Fariello
225 Broadway – 29th Floor
New York, New York 10007

Nasser Nakissa, M.D.
700 S. Zarzamora Street
Suite LL3
San Antonio, Texas 78207

Nathaniel White, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Nasser Nakissa, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-260) 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. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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.

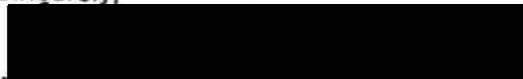
The notice of review served on the Administrative Review Board should be forwarded to:

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:cah
Enclosure

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

IN THE MATTER
OF
NASSER NAKISSA, M.D.

DETERMINATION
AND
ORDER



BPMC #15-260

A hearing was held October 14, 2015, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Hearing and a Statement of Charges, both dated April 29, 2015, were served upon the Respondent, **Nasser Nakissa, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Diane M. Sixsmith, M.D., M.P.H.**, Chair, **Leland Deane, M.D., M.B.A.**, and **Janet M. Miller, R.N.**, 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 **Richard J. Zahnleuter, Esq.**, Acting General Counsel, by **Nathaniel White, Esq.**, of Counsel. The Respondent, **Nasser Nakissa, M.D.**, did appear with Counsel, **Jillian M. Singer, Esq.**, of the firm of **Balestriere Fariello**, of New York City, 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). 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)(d) by having surrendered his license to practice medicine in lieu of further disciplinary proceedings after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation would, if committed in New York State, constitute professional misconduct under the laws New York State.

The Respondent is also charged with professional misconduct pursuant to Education Law §6530(2) by practicing the profession of medicine fraudulently by failing to disclose a professional misconduct matter in Texas on his New York Registration Renewal application. Copies of the Notice of Hearing 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. The Respondent, Nasser Nakissa, M.D., did appear with Counsel and was duly served by substituted service on May 27, 2015. (Petitioner's Exhibit 2)
2. Respondent was authorized to practice medicine in New York State on August 24, 1979, by the issuance of license number 139484 by the New York State Education Department. (Petitioner's Exhibit 4)
3. On or about October 18, 2013, the Texas Medical Board signed and entered an Agreed Order of Voluntary and Permanent Surrender whereby Respondent voluntarily surrendered his Texas medical license in lieu of further disciplinary proceedings. The Agreed Order of Voluntary and Permanent Surrender resulted from a Texas Complaint alleging, *inter alia*, that Respondent prescribed controlled substances to eleven patients for treatment of pain and failed to document and/or perform one or more of the following:

(a) an adequate medical history and physical examination; (b) evaluation of pain; (c) development of a treatment plan; (d) evaluation and/or monitoring of treatment effectiveness; (e) informed consent about the risks and benefits of the treatment (f) discussion of Respondent's expectations for patient compliance throughout the course treatment for chronic pain; (g) referral for further evaluation, diagnostic testing and/or treatment; and (h) referral to specialists to address co-morbidities. (Petitioner's Exhibit 5)

4. The Texas Complaint also alleged that Respondent non-therapeutically prescribed controlled substances without adequate, objective, medical rationale to support the prescriptions and that for one or more patients, Respondent: (i) increased dosages and changed medications without medical justification; (j) prescribed dangerous and potentially lethal combinations of medications; and (k) inappropriately provided early refills for patients and/or refills for patients' stolen medications. (Petitioner's Exhibit 5)

5. The conduct resulting in the Texas Agreed Order of Voluntary and Permanent Surrender 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(4) (gross negligence on a particular occasion);
- c. New York Education Law §6530(5) (incompetence on more than one occasion); and/or
- d. New York Education Law §6530(6) (gross incompetence).

6. On or about August 29, 2011, a Complaint was filed with the Texas Medical Board accusing Respondent of committing professional misconduct. (Petitioner's Exhibit 9)

7. On or about September 20 2013, Respondent prepared and/or submitted to the New York State Education Department a Registration Renewal document wherein Respondent falsely answered "No" to the question, "Since your last registration application, are charges

pending against you in any jurisdiction for any sort of professional misconduct?"

(Petitioner's Exhibit 6)

8. Respondent's Registration Renewal document contained a false representation, Respondent knew the statement was false and Respondent intended to mislead through the false representation. (Petitioner's Exhibit 9)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked, suspended or having other disciplinary action....after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation would....., if committed in New York State, constitute professional misconduct under the laws New York State..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law §6530 (2) by practicing the profession of medicine fraudulently ..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with Counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Substituted Service of the Notice of Hearing and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Department had met the requirements of law for jurisdiction in the service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed. It is noted that there was no dispute about jurisdiction.

On review of the entire matter, it appears that there is also no dispute about the fact of the discipline imposed by the State of Texas. The Record clearly shows, at Exhibit 5, that the Respondent voluntarily surrendered his Texas medical license in lieu of further disciplinary proceedings. The documents submitted by the Department show an Agreed Order of Voluntary and Permanent Surrender resulting from a Texas Complaint alleging several drug related acts of misconduct. The Texas complaint establishes, for the record, that Respondent prescribed controlled substances to eleven patients for treatment of pain. The Texas Complaint (Exhibit 5) goes on to document separate violations of medical misconduct in the dispensing of controlled substances.

The panel took particular note of the fact that this is not the first instance of such behavior. The panel noted that in the year 2005, the Respondent was before the Texas Board of Medical Examiners on a similar case of wrongful prescribing of controlled substances. (See Exhibit 9). The 2005 case was resolved with a Reprimand and an Order that he maintain a logbook showing that his prescribing of controlled substances was medically indicated and in therapeutic amounts. (Exhibit 9, page 4) This 2005 case also

ordered a Practice Monitor to ensure compliance with the issuance of controlled substances.

The record goes on to show that in 2010, the Respondent was back before the Texas State Board of Medical Examiners for similar violations. The Practice Monitor found that the Respondent did not maintain the required logbooks and did not provide the medical charts as agreed in the previous Order. This time, Texas merely continued the prior Order, but extended it to two additional cycles to oversee his compliance with the rules for prescribing controlled substances.

It is noted that the 2005 Texas Medical Board Order resulted in New York taking action by way of a Direct Referral Hearing. This matter was settled by a Consent Order with a Censure and Reprimand and three years' probation. (See Exhibit 7) It is also noted that the second specification in the instant case charged the Respondent with violation of New York Education Law §6530 (2) by practicing the profession of medicine fraudulently. This charge was proven by Exhibit 6, the Respondent's 2013 New York Registration Application, wherein the Respondent checked the "no" box when asked about pending charges for professional conduct. The Respondent's attorney admitted this fact but argued it was an "innocent mistake" and not an intentional act. The panel did not accept this argument, noting that the application was dated September 11, 2013, and the Respondent had just signed the permanent surrender of his Texas medical license on September 6, 2013.

Finally, the attorney for the Respondent argued that her client surrendered his Texas medical license, not because he was guilty of the underlying accusations, but because he did not have the funds to continue to litigate the matter before the Texas Medical Board.

The panel did not accept this argument, noting that this was his third time before the Board and, most likely, he could offer no defense to the charges. The panel was unanimous in finding that the actions of the Respondent warranted revocation of the Respondent's New York license as the only appropriate protection for New York patients. Moreover, the Department asked for a revocation of the Respondent's license and the panel, unanimously, agreed with the attorney for Department on this penalty.

Although the Respondent was present at the hearing, he chose not to testify. The record does not contain any evidence of mitigating circumstances or remorse. The Respondent did submit a sheaf of letters testifying to his good character. (See Exhibits A to Z, and AA to GG) The panel examined these letters and noted that the majority of them date from 1973 and the 1980's. The panel saw nothing in these letters to persuade them to impose a lesser penalty than that requested by the Department: revocation.

The Respondent's attorney asked that he be given a limited license with a permanent restriction on treating chronic pain. The panel did not accept this proposal and ruled, instead, for revocation. The panel based its determination on the documentation submitted and on all the evidence in the record. The panel considered the full range of penalties available and was unanimous that revocation would be the proper penalty. Accordingly, as to the penalty to be imposed, the Hearing Committee determined that the people of New York State would be protected by a revocation of 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 hereby 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: New York, New York

October 31, 2015


Diane M. Sixsmith, M.D., M.P.H., Chair,

Leland Deane, M.D., M.B.A.
Janet M. Miller, R.N.

Nasser Naklssa, M. D. - Direct Referral

To:

Nasser Nakissa, M.D.
Respondent



Nasser Nakissa, M.D.
Respondent
700 S Zarzamora St.
Suite LL3
San Antonio, TX 78207

Jillian M. Singer, Esq.
Attorney for Respondent
Balestriere Fariello
225 Broadway, 29th Floor
New York, New York, 10007

Nathaniel White, Esq.
Attorney for Petitioner
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX 1

6/16/15

IN THE MATTER
OF
NASSER NAKISSA, M.D.

NOTICE
OF
HEARING

TO: Nasser Nakissa, M.D.
[REDACTED]


Nasser Nakissa, M.D.
700 S Zarzamora St
Suite LL3
San Antonio, TX 78207

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on July 16, 2015, at 10:30 A.M., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here 

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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 HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten 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. 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 N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner


hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW
YORK STATE BE REVOKED OR SUSPENDED, AND/OR
THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS
SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATE April 29, 2015

Albany, NY


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
Nathaniel C. White, Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
NASSER NAKISSA, M.D.

STATEMENT
OF
CHARGES

NASSER NAKISSA, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 24, 1979, by the issuance of license number 139484 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 18, 2013, the Texas Medical Board signed and entered an Agreed Order of Voluntary and Permanent Surrender whereby Respondent voluntarily surrendered their Texas medical license in lieu further disciplinary proceedings. The Agreed Order of Voluntary and Permanent Surrender resulted from a Texas Complaint alleging, *inter alia*, that Respondent prescribed controlled substances to eleven patients for treatment of pain and failed to document and/or perform one or more of the following: (1) an adequate medical history and physical examination; (2) evaluation of pain; (3) development of a treatment plan; (4) evaluation and/or monitoring of treatment effectiveness; (5) informed consent about the risks and benefits of the treatment; (6) discussion of Respondent's expectations for patient compliance throughout the course treatment for chronic pain; (7) referral for further evaluation, diagnostic testing and/or treatment; and (8) referral to specialists to address co-morbidities. The Texas Complaint also alleged that Respondent non-therapeutically prescribed controlled substances without adequate, objective, medical rationale to support the prescriptions and that for one or more patients, Respondent: (9) increased dosages and changed medications without medical justification; (10) prescribed dangerous and potentially lethal combinations of medications; and (11) inappropriately provided early refills for patients and/or refills for patients' stolen medications.

B. The conduct resulting in the Texas Agreed Order of Voluntary and Permanent Surrender 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(4) (gross negligence on a particular occasion);
3. New York Education Law §6530(5) (incompetence on more than one occasion); and/or
4. New York Education Law §6530(6) (gross incompetence).

C. On or about September 20, 2013, Respondent prepared and/or submitted to the New York State Education Department a Registration Renewal document wherein Respondent falsely answered "No" to the question, "Since your last registration application, are charges pending against you in any jurisdiction for any sort of professional misconduct?" On or about August 29, 2011, a Complaint was filed with the Texas Medical Board accusing Respondent of committing professional misconduct. Respondent's Registration Renewal document contained a false representation, Respondent knew the statement was false and Respondent intended to mislead through the false representation.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state [namely N.Y. Educ. Law §§ 6530(3), 6530(4), 6530(5) and/or 6530(6)] as alleged in the facts of the following:

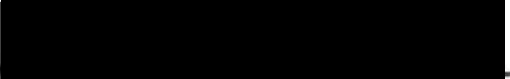
1. The facts in paragraph A.

SECOND SPECIFICATION

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 8530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

2. The facts in paragraphs A and C.

DATE: April 29, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct