



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

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

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

July 22, 2016

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Richard Walker, Jr., M.D.  
[REDACTED]

Richard Walker, Jr., M.D.  
[REDACTED]

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

**RE: In the Matter of Richard Walker, Jr., M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.16-259) 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. 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 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,

A black rectangular redaction box covering the signature of James F. Horan.

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

**COPY**

-----X  
: **IN THE MATTER** :  
: **OF** :  
: **RICHARD WALKER, JR., M.D.** :  
-----X

**DETERMINATION  
AND  
ORDER**

BPMC #16-259

A hearing was held on June 16, 2016, at the offices of the New York State Department of Health ("Department").<sup>1</sup> Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), **MOHAMMAD-REZA GHAZI-MOGHADAM, M.D.**, Chairperson, **PAUL J. LAMBIASE**, and **RAVINDER MAMTANI, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE ("ALJ")**, served as the Administrative Officer.

The Department appeared by Lee Davis, Esq. A Notice of Referral Proceeding and Statement of Charges dated November 6, 2015, and October 23, 2015, respectively, were served upon Richard Walker, Jr., M.D. ("Respondent"), who did not appear to participate at the hearing.<sup>2</sup> There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charge that Respondent committed professional misconduct, in violation of Education Law ("Educ. Law") §

<sup>1</sup> The location of the hearing was 150 Broadway, Suite 510, Menands, New York. The references in brackets refer to exhibits ["Ex."] or transcript page numbers ["T."].

<sup>2</sup> Although Respondent arrived at the Department of Health's Menands office on the hearing date, he left prior to the commencement of the hearing. The Department presented evidence to show that the Notice of Referral Proceeding and Statement of Charges were personally served on Respondent on November 30, 2015, pursuant to PHL § 230(10)(d)(i). As such, the ALJ determined that jurisdiction was established. [Ex. 1, 2; Appendix I].

6530(9)(d), such that the penalty of Censure and Reprimand with three years' probation, with conditions, is appropriate.

### **BACKGROUND**

The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(d), "having (his) license to practice medicine revoked, suspended or having other disciplinary action taken" where the conduct resulting in the disciplinary action taken against his license to practice medicine would, if committed in the state of New York, constitute professional misconduct under the laws of the state of New York.

This case is based on an Agreed Order on Formal Finding ("Texas Order") of the Texas Medical Board ("Texas Board") dated June 27, 2014, finding Respondent guilty of professional misconduct in his failure to adequately supervise clinic staff, which resulted in their use of a facsimile of his signature to issue patients "unauthorized prescriptions" for controlled substances "without [his] knowledge." Whether the Texas Board's findings are misconduct here hinges on the underlying conduct constituting professional misconduct in New York. The Department charges that had Respondent's conduct occurred in New York, it would have constituted practicing the profession while failing to exercise appropriate supervision, as defined in Educ. Law § 6530(33), and with negligence on more than one occasion, as defined in Educ. Law § 6530(3). [Ex. 1, 4].

### **FINDINGS OF FACT**

The Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance

of the evidence. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Richard Walker, Jr., M.D., the Respondent, was licensed to practice medicine in New York on January 24, 1991, by the issuance of license number 184844 by the Education Department. [Ex. 1, 3].

2. On June 27, 2014, the Texas Board found Respondent guilty of professional misconduct in his inadequate supervision of medical staff members, including unlicensed individuals, which resulted in their use of "facsimiles of Respondent's signature" to issue unauthorized prescriptions for controlled substances to five patients. [Ex. 1, 4].

3. The Texas Board imposed the penalties of payment of a \$2,500.00 fine, a practice monitor or physician, submission of "patient medical and billing records" for a period of eight consecutive monitoring cycles, and completion of 12 hours of continuing medical education in medical ethics, recordkeeping, and pain management.<sup>3</sup> [Ex. 1, 4].

#### VOTE OF THE HEARING COMMITTEE

The Hearing Committee concluded that the evidence supports sustaining the charge that Respondent committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

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<sup>3</sup> There is a condition in the Texas Order that the terms of the Order are extended should Respondent render care to less than 30 patients in a single billing cycle, which consists of ninety days. [Ex. 4].

## CONCLUSIONS OF LAW

Although Respondent came to the office where the hearing was to be held, he left prior to the commencement of the hearing after he stated to a staff member at the office that he had to leave for a scheduled flight. Therefore, he did not remain at the hearing location to participate in the hearing in person or by counsel. After considering the previous history of this case, which included multiple adjournments of the hearing granted at the request of Respondent and the establishment of jurisdiction based on the documentary evidence demonstrating service of the Notice of Referral Proceeding and Statement of Charges, the ALJ ruled that the hearing could proceed on the merits despite Respondent's absence. [Ex. 1, 2].

The Department made a motion to have the charges and allegations in the Statement of Charges deemed admitted, pursuant to PHL § 230(10)(p), due to Respondent's failure to file a written answer.

The Notice of Referral Proceeding states at page two the following:

Pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. [Ex. 1].

After determining that the Notice of Hearing complied with the requirement that a licensee be provided notice pursuant to PHL § 230(10)(p), and determining that the Respondent failed to file a written answer to the specification of charges and factual allegations in the Statement of Charges, the ALJ ruled at the hearing that they were deemed admitted under PHL § 230(10)(p). [Ex. 1; Corsello v. New York State Dept. of Health, 300 A.D.2d 849 (3<sup>rd</sup> Dept. 2002); T. 13].

New York, like Texas, requires that a physician exercise appropriate oversight over persons who are authorized to practice only under supervision and to exercise the care that a reasonably prudent physician would under similar circumstances. The purpose in these requirements is to protect

patients from harm. Here, Respondent's signature was used by the medical staff he was charged with supervising to commit "unlicensed medical acts," which included the issuance of unauthorized prescriptions for controlled substances to five patients. The Hearing Committee noted that Respondent's failures, had they occurred in New York, would have constituted a failure to supervise and negligence on more than one occasion, as defined in Educ. Law §§ 6530(33) and 6530(3), respectively. [Ex. 4].

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and found that the sustained specification indicates Respondent's careless use of his medical license to improperly supervise clinic staff to the detriment of patients issued prescriptions for addictive and dangerous drugs. Although Respondent presented mitigating circumstances to the Texas Board, including implementation of protocols "to ensure appropriate treatment of pain management patients," the Hearing Committee did not give this much weight since the documents in evidence failed to show the nature of the remediation and whether actual changes to Respondent's clinic practice occurred. As such, the Hearing Committee unanimously concluded that Respondent's New York medical license be subject to the penalty of Censure and Reprimand with three years' probation, with conditions.

#### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine is subject to a Censure and Reprimand, and Respondent is placed on probation for a period of three years, subject to the conditions provided in the Terms of Probation, which are tolled while the Respondent is not engaged in the practice of

medicine in the state of New York and require that Respondent practice under supervision. (Appendix II);

2. Respondent must provide 90 days' notice should he decide to return to New York to practice medicine and shall recommence the practice of medicine within the state of New York only upon the approval of the director of the Office of Professional Medical Conduct ("OPMC");

3. Respondent must comply with the terms of this Determination and Order and all the Terms of Probation attached to this Determination and Order; and

4. This Order shall be effective upon service on Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: Albany, New York  
July 21, 2016



Mohammad-Reza Ghazi-Moghadam, M.D.  
Chairperson

Paul J. Lamblase  
Ravinder Mamtani, M.D.

TO: Richard Walker Jr., M.D.



Richard Walker Jr., M.D.



Lee Davis, Esq.  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower Building – Room 2512  
Empire State Plaza  
Albany, New York 12237



## APPENDIX I

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

IN THE MATTER  
OF  
RICHARD WALKER JR., M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Richard Walker Jr., M.D. Richard Walker Jr., M.D.

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. 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 January 14, 2016 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.<sup>1</sup>

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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 or sworn testimony on your behalf. Such evidence 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 which 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

<sup>1</sup> For GPS purposes, enter "Menands", not "Albany".



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 (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later 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. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 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.

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

Department attorney: Initial here [REDACTED]

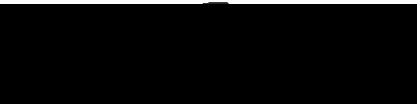
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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.

**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.**

**DATED:** Albany, New York  
November 6, 2015



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

Inquiries should be addressed to:

**Lee A. Davis**  
Associate Counsel  
Bureau of Professional Medical Conduct  
Coming Tower - Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

IN THE MATTER

OF

RICHARD WALKER, JR., M.D.

STATEMENT  
OF  
CHARGES

RICHARD WALKER, JR., M.D., the Respondent, was authorized to practice medicine in New York State on or about January 24, 1991, by the issuance of license number 184844 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about June 27, 2014, the Texas Medical Board (Texas Board) issued an Agreed Order on Formal Filing (Order) imposing disciplinary action against Respondent's Texas medical license. The Order imposed an administrative penalty of \$2,500, required Respondent to have a practice monitor, and to complete 12 hours of continuing medical education within one year of the date of the Order. The Texas Board's disciplinary action resulted from a finding that Respondent failed to provide adequate supervision to the clinical staff, thereby allowing the staff to perform unlicensed medical acts, resulting in the unauthorized prescriptions for controlled substances to five patients.
- B. The conduct resulting in the Texas Board Order 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 (33) [failure to exercise appropriate supervision].

**SPECIFICATION OF CHARGES**

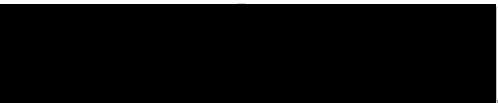
**FIRST SPECIFICATION**

**HAVING HAD DISCIPLINARY ACTION TAKEN**

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, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State as alleged in the facts of the following:

1. The facts in Paragraphs A and B.1; and/or A and B.2.

DATE: October 23, 2015  
Albany, New York



MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

APPENDIX II

### TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and to governing law. Any act of professional misconduct by Respondent as defined by Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(10) or (19), or both.
2. Respondent shall remain in continuous compliance with all requirements of Educ. Law § 6502, including, but not limited to, the requirements that licensee register and continue to be registered with the New York Education Department and that licensee pay all registration fees. Respondent shall not exercise the option provided in Educ. Law § 6502(4) to avoid registration and payment of fees.
3. Respondent must provide 90 days' notice should he decide to return to New York to practice medicine, and he must obtain the approval of the director of the OPMC before recommencing the practice of medicine within New York. Respondent shall be placed on probation for a period of three years, during which Respondent's practice as a physician shall be subject to conditions imposed for a period of no less than one year. The minimum conditions shall include the following:
  - a. Respondent's medical practice shall be supervised by a licensed physician ("practice supervisor") proposed by Respondent and approved, in writing, by the director of the OPMC. The supervising physician shall be familiar with Respondent's history and with the Texas Order and its conditions. The supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. The supervising physician shall be in a position to regularly observe and assess Respondent's medical practice. The supervising physician shall oversee Respondent's prescribing, administering, dispensing, inventorying and wasting of controlled substances. The supervising physician shall acknowledge willingness to comply with the supervision terms by executing the acknowledgment provided by the OPMC.
    - i. Respondent shall ensure that the supervising physician submits quarterly reports to the OPMC regarding the quality of Respondent's medical practice, including whether diagnoses and treatments are appropriate, any unexplained absences from work, a representative sampling of at least five percent of the patients seen by Respondent to determine whether the



patients managed are in line with what is appropriate and proper, and certifying Respondent's compliance with each condition imposed, and detailing, if applicable, Respondent's failure to comply.

- ii. The supervising physician shall report any questionable medical practices or possible misconduct to the OPMC.
4. The terms set forth in paragraph three are the minimum probation terms related to fitness to practice to be imposed on Respondent, and other terms may be added by the director of the OPMC. All compliance costs shall be Respondent's responsibility.
  5. In addition to the terms set in paragraphs three and four above, Respondent shall also be subject to the following standard terms of probation:
    - a. The probation period shall toll when Respondent is not engaged in active medical practice in the state of New York for a period of 30 consecutive days or more. Respondent shall notify the director of the OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York for a consecutive 30-day period. Respondent shall then notify the director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the director may impose as reasonably necessary to protect the health of the public.
    - b. Respondent's professional performance may be reviewed by the director of the OPMC. This review may include, but shall not be limited to, a review of office records, patients' records, hospital charts, and/or electronic records, as well as interviews and/or periodic visits with Respondent and staff at practice locations or the OPMC offices.
    - c. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care with respect to these practices.
    - d. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical record shall contain all information required by state rules and regulations regarding controlled substances.
    - e. Respondent shall comply with the Determination and Order and all the associated terms, conditions, restrictions, limitations and penalties and shall be responsible for all associated compliance costs. Upon receiving evidence of non-compliance with the Order, or any violation of its terms, the director of the OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent authorized by law.