



Public

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

433 River Street, Suite 303 Troy, New York 12180-2299

January 5, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Elmer Manalo, 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 Elmer Manalo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-01) 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

COPY

IN THE MATTER
OF
ELMER MANALO, M.D.

DETERMINATION

AND

ORDER

BPMC #11-01

A hearing was held on December 15, 2010, 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 October 22, 2010, were served upon the Respondent, **Elmer Manalo, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D., Chair, William A. Tedesco, M.D. and, Thomas W. King, Jr. M.P.A., P.E.,** 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 **Thomas Conway, Esq.,** General Counsel, by **Jude B. Mulvey, Esq.,** of Counsel. The Respondent did not appear, although 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 THE 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 State. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) 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 and also with violation of New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

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 transcript, page numbers or exhibits, denoted by the prefixes "T." or "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. **Elmer Manalo, M.D.**, the Respondent, was authorized to practice medicine in New York State on November 12, 1983, by the issuance of license number 156913 by the New York State Education Department (Petitioner's Ex. 4).
2. The Respondent was a licensed Medical Doctor in the State of Indiana holding Indiana license number 01040595A (Petitioner's Ex. 5).
3. The Respondent was charged and found guilty by the Medical Licensing Board of the State of Indiana with several violations of the Indiana Code, including the following:
 - a. Respondent violated Indiana Code § 25-1-9-4(a)(5), in that he has engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public as evidenced by his inappropriate touching of an undercover detective in the office setting and his solicitation of this detective for dates.
 - b. Respondent violated Indiana Code § 25-1-9-4(a)(11), in that, he has engaged in sexual contact with a patient under the practitioner's care or has used the practitioner-patient relationship to solicit sexual contact with a patient under practitioner's care as evidenced by the Respondent's own admission that he had sexual relations with at least three (3) patients in the last several years.
 - c. Respondent violated Indiana Code § 25-1-9-4(a)(4)(B), in that he continued to practice although unfit due to failure to keep abreast of current theory or practice to wit: 21 C.F.R. § 1306.04(a) "A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice" as evidenced by Respondent's prescribing Percocet, Valium, and Tylenol 3 to an undercover detective without legitimate medical purposes.
 - d. Respondent violated Indiana Code § 25-1-9-4(a)(5), in that he engaged in lewd or immoral conduct in connection with the delivery of services to the public as evidenced by his participation in a murder for hire plot against a former patient and the fact that Respondent participated in meetings regarding the murder for hire plot in his medical office (Petitioner's Ex. 5).
4. Based on the above and other violations, the Medical Licensing Board of the State of Indiana permanently revoked the Respondent's medical license by Order dated September 11, 2008 (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct in New York State....."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine revoked and/or having other disciplinary action taken 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)

HEARING COMMITTEE DETERMINATION

The record in this case shows that the Respondent, was authorized to practice medicine in New York State on November 12, 1983, by the issuance of license number

156913 by the New York State Education Department and that he was also a licensed Medical Doctor in the State of Indiana holding an Indiana medical license.

The Respondent did not appear at the hearing. The ALJ received into evidence Petitioner's Exhibit # 2, an affidavit and documentation establishing that the Respondent was personally served in the State of Indiana with the Notice of this proceeding and on that basis ruled that jurisdiction was obtained over the Respondent and that the hearing could proceed notwithstanding his absence.

The Department presented Exhibit # 5, the Order of the Medical Licensing Board of Indiana, which permanently revoked the Respondent's medical license by Order dated September 11, 2008. The panel found that any one of these violations would have been sufficient grounds to revoke his New York license, but took particular note of one of the findings that evidenced the Respondent's participation in a murder for hire plot against a former patient. The Committee found that this conduct definitely justified revocation.

The issue before this Committee is to choose a penalty that offers the best protection to the people of the State. The Committee finds that the Respondent has committed sufficiently egregious misconduct that is worthy of the revocation of his medical license. The Committee concludes that the Respondent's conduct in this matter has so violated the public trust that revocation is the only appropriate penalty under the circumstances of this case.

In reaching this conclusion, the Committee considered the full range of penalties available in a case such as this. The Committee concluded that the only way to ensure the safety of the public is to revoke Respondent's New York medical license.

ORDER

IT IS HEREBY ORDERED THAT:

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

DATED: Albany, New York
December 31, 2010

REDACTED

Lyon M. Greenberg, M.D., Chair

William A. Tedesco, M.D.
Thomas W. King, Jr. M.P.A., P.E.,

To:

Elmer Manalo, M.D.,
Respondent

REDACTED

Jude B. Mulvey, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER
OF
ELMER MANALO, M.D.
CO-07-10-5813-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ELMER MANALO, M.D.
REDACTED

ELMER MANALO, M.D.
11530 E. Washington St.
Indianapolis, IN 46229-2828

ELMER MANALO, M.D.
8051 S. Emerson Ave.
#370
Indianapolis, IN 46237-8600

ELMER MANALO, 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 15th day of December, 2010, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

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.

EXHIBIT

1

tabbles

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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, whose name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide, at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here _____

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
October 22, 2010

REDACTED

PETER D. VAN BUREN
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
ELMER MANALO, M.D.
CO-07-10-5813-A

STATEMENT
OF
CHARGES

ELMER MANALO, M.D., Respondent, was authorized to practice medicine in New York State on November 12, 1983, by the issuance of license number 156913 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 11, 2008, the Medical Licensing Board of Indiana (hereinafter "Indiana Board"), by a Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order (hereinafter "Indiana Order"), permanently revoked Respondent's license to practice medicine, based on findings, among others, that he engaged in multiple acts of lewd or immoral conduct in connection with the delivery of medical services by inappropriately touching a patient, that he engaged in sexual contact with at least three patients or used the practitioner-patient relationship to solicit sexual contact with a patient, negligence in the practice of medicine by inappropriately prescribing controlled substances to at least three individuals, prescribing controlled substances without adequate medical indication, and engaging in lewd or immoral conduct with the delivery of services by his participation in a murder for hire plot against a former patient.

B. The conduct resulting in the Indiana 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) (Practicing the profession with negligence on more than one occasion);
2. New York Education Law §6530(5) (Practicing the profession with incompetence on more than one occasion);

3. New York Education Law §6530(20) (Conduct in the practice of medicine which evidences moral unfitness); and/or
4. New York Education Law §6530(31) (Willfully harassing, abusing or intimidating a patient).

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license revocation and/or other disciplinary action would, if committed in New York state, constituted professional misconduct under the laws of New York state, in that Petitioner charges:

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

DATED: *October 22*, 2010
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct