



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 2, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – 1st Floor
Troy, New York 12180

Melinda Phelps, Esq.
Katherine A. Robertson, Esq.
Bulkley, Richardson and Gelinas
1500 Main Street
Suite 2700
P.O. Box 15507
Springfield, MA 01115-5507

Sara Stalman, M.D.
10 Tuckers Lane
Blue Hill, Maine 04614

RE: In the Matter of Sara Stalman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-236) 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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

IN THE MATTER
OF
SARA STALMAN, M.D.

DETERMINATION
AND
ORDER

BPMC-02-236

A hearing was held on July 17, 2002, 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 May 1, 2002, were served upon the Respondent, **Sara Stalman, M.D.** **Gerald S. Weinberger, M.D.**, Chairperson, **Edward C. Sinnott, M.D.**, and **Sandra L. Williams, R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and was represented by Bulkley, Richardson and Gelinias, 1500 Main Street, Suite 2700, P.O. Box 15507, Springfield, Massachusetts 01115-5507, **Melinda Phelps, Esq.**, and **Katherine A. Robertson, Esq.**, of Counsel.

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 Section 6530(9)(b) and (d). 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:	Sara Stalman, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Sara Stalman, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1982, by the issuance of license number 150607 by the New York State Education Department (Petitioner's Ex. 4).

2. On November 13, 2001, the Maine Board of Licensure in Medicine ("Maine Board"), by a Decision and Order ("Maine Order"), denied the Respondent's application for permanent licensure to practice medicine. This determination was based on the Respondent's prescribing in a manner not supported, recommended or recognized in her specialty, and upon her knowingly making an incorrect answer on her application for permanent licensure. (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(2) - "Practicing the profession fraudulently or beyond its authorized scope;"
- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;" and
- New York Education Law Section 6530(21) - "Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so..."

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 under the laws of New York state..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having had her application for a license refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license refusal 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 Statement of Charges alleged that the Respondent committed professional misconduct based on findings in the Maine Order that the Respondent had knowingly answered falsely a question on her Maine license application and that she had prescribed medications in an improper manner. (There is language in the Maine Order about the Respondent discussing her own medical problems with her patients and there is some evidence in the hearing record on this subject. However, the Statement of Charges in the present proceeding does not address this issue and it will play no role in the determination of the present proceeding.)

Public Health Law Section 230(10)(p) limits the scope of this hearing such that the Hearing Committee is required to accept the findings of fact in an order from a professional disciplinary proceeding in another state. The Hearing Committee can consider mitigating factors regarding why an act of professional misconduct was committed, but, pursuant to this statute, must reject any attempt to prove that the other state's finding of professional misconduct was factually incorrect. The Respondent, prior to presenting her evidence, claimed that the purpose of the evidence was to prove that

mitigating circumstances did exist. In fact, virtually all evidence introduced by the Respondent constituted a denial of the accuracy of the findings of the Maine Board. This evidence must be and is rejected automatically.

The Respondent argued that in the proceeding before the Maine Board, she did not have an attorney, was not fully apprised prior to the hearing of some of the issues and, therefore, did not have effective representation in that proceeding. Assuming for the sake of argument that these assertions are true, they do the Respondent no good. Section 230(10)(p) requires acceptance in the present proceeding of the Maine Order's findings, regardless of what procedural shortcomings may have existed in the proceedings in Maine. The Respondent's remedy for the alleged procedural problems in the Maine hearing are to be found in the courts of the State of Maine and nowhere else.

One of the grounds for the Maine Board's denial of the Respondent's application for permanent licensure was that she had provided a false answer to a question on the licensure application. The question, number 15-9, is, "Have you ever had your hospital, HMO or other health care entity privileges revoked, suspended, restricted, limited in any way, or withdrawn voluntarily?" (Respondent's Ex. A, p. 2). The Respondent answered "No" despite the fact that the Respondent "was terminated by Kidspace [an inpatient psychiatric institution] before the end of her contract... (Petitioner's Ex. 5, p. 5). The Respondent testified at length on why and how she provided the false answer, but, for the purposes of this Determination and Order, her testimony can be reduced to the following: she did not understand the meaning of the question and made an honest mistake. This position must be rejected because of the specifics of the finding in the Maine Order. The Maine Order did not find simply that the answer at issue was incorrect; it found that "she knowingly incorrectly answered question 15-9 on her application for permanent licensure"

(Petitioner's Ex. 5, p. 6). The Respondent's position on this issue contradicts the finding in the Maine Order that the incorrect answer was made "knowingly" and must be rejected.

The Respondent noted that question 15-9 on the Maine application is not worded the same as any question on the New York State application for licensure to practice medicine. The Respondent argued that because of this, answering this question on the Maine application falsely cannot constitute professional misconduct as that term is defined under New York State law. This argument is rejected. The exact language of the question is not what is most important. What is of greatest importance is that the Respondent's intentionally answering the question falsely and submitting the application constituted practicing the profession fraudulently (professional misconduct under New York Education Law Section 6530[2]), willfully filing a false report (professional misconduct under New York Education Law Section 6530[21]), and moral unfitness (professional misconduct under New York Education Law Section 6530[20]). The Respondent's argument makes as little sense as saying that billing the Medicaid Program of another state for services that had not been rendered does not constitute professional misconduct under New York State law because the other state and New York do not use the same Medicaid billing form. What matters is the fraud, not the format for the fraud.

The Maine Order finds that the Respondent was terminated from Kidspace, in part, because management at Kidspace determined "that using the same medication regime for each child was detrimental..." (Petitioner's Ex. 5, p. 5). The Maine Board found:

Dr. Stalman was unable to present the Board of Licensure in Medicine with any peer review published materials supporting her medication regime. Additionally, evidence was presented showing that Dr. Stalman was in fact prescribing in a manner not recognized by her peers and without any appropriate investigational review, oversight or informed consent to suggest that her prescribing was part of a bona fide experimental model. (Petitioner's Ex. 5, p. 5)

The Respondent testified at length about her prescribing process while at Kidspace. This testimony constituted a denial of the findings in the Maine Order, which for reasons stated above, must be given no consideration.

The Respondent introduced into evidence three exhibits (Respondent's Exhibits C, D and E) to demonstrate that her prescribing regime, while not formally or officially recognized in her specialty, was, nonetheless, widely used in her specialty. This was presented as a mitigating circumstance. The Hearing Committee finds very little in the three exhibits helpful to the Respondent and does not conclude that there are any mitigating circumstances of substance relevant to this proceeding.

The Hearing Committee is of the opinion that the Respondent was an evasive witness and, therefore, not a person who inspires trust or confidence. She has denied any wrongdoing in Maine, rather than taking responsibility for it. She has given the Hearing Committee no reason to conclude that her conduct in New York State in the future will be any better than her conduct in Maine was in the past. The Petitioner sought a revocation of the Respondent's license to practice medicine; this request will be granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is revoked.
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Ardsley, New York
8-1-, 2002


Gerald S. Weinberger, M.D.
Chairperson

Edward S. Sinnott, M.D.
Sandra L. Williams, R.N.

APPENDIX I

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



IN THE MATTER
OF
SARA STALMAN, M.D.
CO-02-01-0160-A

NOTICE OF
REFERRAL
PROCEEDING

TO: SARA STALMAN, M.D.
31 Riverview Drive
Dalton, MA 01226

SARA STALMAN, M.D.
RR. 1 Box 1095
Penobscot, ME 04476

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 Sections 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 20th day of June 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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. 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 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of

Adjudication") as well as the Department of Health attorney indicated below, on or before June 10, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before April 8, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

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.

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

DATED: Albany, New York

May 1, 2002



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

**SARA STALMAN, M.D.
CO-02-01-0160-A**

STATEMENT

OF

CHARGES

SARA STALMAN, M.D., the Respondent, was authorized to practice medicine in New York state on July 1, 1982, by the issuance of license number 159607 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 13, 2001, the State of Maine, Board of Licensure in Medicine (hereinafter "Maine Board"), by a Decision and Order (hereinafter "Maine Order"), denied Respondent's licensure to practice medicine, based on Respondent's prescribing in a manner not supported, recommended or recognized in her specialty and that she knowingly incorrectly answered a question on her application for permanent licensure.

B. The conduct resulting in the Maine Board 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(20) (moral unfitness); and/or
4. New York Education Law §6530(21) (willfully making or filing a false report).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York State Education Law §6530(9)(b) 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 New York state, in that Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having had her application for a license refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license refusal 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/or B.

DATED: *May 1*, 2002
Albany, New York


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