



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

Public

April 11, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph K. Statkus, M.D.
11700 Carls Glenne Drive
Hemdon, Virginia 20170

Mary Eleanor Baluss, Esq.
Director, Pain Law Initiative
2850 Arizona Terrace N.W.
Washington, D.C. 20016

Robert Bogan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
233 River Street – Suite 303
Troy, New York 12180-2299

RE: In the Matter of Joseph K. Statkus, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-075) 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), 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 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., 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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

COPY

BPMC NO. 06-75

IN THE MATTER
OF
JOSEPH K. STATKUS, M.D.

DETERMINATION
AND
ORDER

A Notice of Referral Proceeding and Statement of Charges, both dated November 10, 2005, were served upon the Respondent, **JOSEPH K. STATKUS, M.D.** **RAVINDER MAMTANI, M.D.**, Chairperson, **JAGDISH M. TRIVEDI, M.D.** and **ANTIONETTE M. MYERS, R.N., COHN-S, CCM**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on March 23, 2006, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person and by **MARY BALUSS, ESQ.**

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 where 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 or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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 Sections 6530(9)(b) and (d), based upon actions allegedly constituting violations of subdivisions (2), (3), (4), (5), (6), (30) and (32). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Respondent

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 unless otherwise specified.

1. **Joseph K. Statkus, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 2, 1990, by the issuance of license number 181169 by the New York State Education Department. (Ex. 4)
2. On 7/20/05, the Virginia Board of Medicine entered an order finding Respondent to have violated various statutes governing the practice of medicine, and suspended his license for at least one year. The charges in that case dealt with the adequacy of care provided by Respondent to eight chronic pain or obesity patients, and the adequacy of his records relating to his encounters with these patients. Among the criticisms of Respondent's handling of these cases were that he failed to obtain adequate historical and examination findings to support his treatments; that he prescribed opiates to patients in inappropriate situations or quantities and/or with inadequate controls, and that he failed to properly document the reasons for such prescriptions; and that he prescribed opiate or weight loss medications without ensuring that other treatments had been tried and failed. (Ex. 5)

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Virginia Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a) and (b), in that the conduct would have constituted misconduct under the laws of New York State, had it been committed here, pursuant to:

- New York Education Law §6530(3) (practicing the profession with negligence on more than one occasion);
- New York Education Law §6530(5) (practicing the profession with incompetence on more than one occasion);
- New York Education Law §6530(32) (failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient).¹

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding

¹ The Department also charged that Respondent's conduct would have constituted the fraudulent practice of medicine, had it been committed in New York State. The Hearing Committee, by a 2-1 vote, concluded that there was nothing in the Virginia order that substantiated this allegation. Furthermore, the Hearing Committee could find no support in the Virginia order for the allegations that Respondent's conduct would have constituted gross negligence or gross incompetence. In addition, the Department also charged Respondent with abandoning a patient. This allegation cannot be accepted, because the New York definition of abandonment involves a patient "...under and in need of immediate professional care and without making reasonable arrangements for the continuation of such care." In other words, the New York statute requires the licensee to care for the patient himself, or to arrange for alternative care. The Virginia finding was that Respondent had failed to properly notify patient A that she was being dismissed from his care, and that he had thereafter refused to treat her. There is no evidence that Virginia law required him to continue care for a properly dismissed patient, or to arrange for alternative care for a dismissed patient, so the Virginia findings do not make out a case of abandonment under New York law.

was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent's Virginia license was suspended after he was found to have violated Virginia statutes regarding the practice of medicine, relating to the treatment of chronic pain and diet patients. It is noted that Respondent attempted at the hearing to contest the medical validity of some of the Virginia Board's conclusions regarding the propriety of his treatments of the patients at issue in that case. However, Respondent is precluded from doing so by the content of Public Health Law Section 230(10)(p), which treats the findings and conclusions of other state licensing and disciplinary agencies as binding in this tribunal, and limits the issue to be decided in this hearing to a determination of the nature and severity of the penalty to be imposed upon the licensee, so long as the conduct would have constituted misconduct in New York, had it been committed here (see footnote 1 for an application of this principle). Respondent's remedy for any dispute with the Virginia Board's findings is, and has been, by appeal from

that decision in the appropriate forum. Respondent testified that he had at least attempted to appeal the Virginia Board's decision, although no information was available at the time of the hearing as to the status of that appeal.

As to the appropriate penalty, the Hearing Committee has given due and careful consideration of the full spectrum of penalties available pursuant to P.H.L §230-a, including:

- (1) Censure and reprimand;
- (2) Suspension of the license, wholly or partially;
- (3) Limitations of the license to a specified area or type of practice;
- (4) Revocation of the license;
- (5) Annulment of the license or registration;
- (6) Limitations on registration or the issuance of any further license;
- (7) The imposition of monetary penalties;
- (8) A course of education or training;
- (9) Performance of public service, and
- (10) Probation.

This consideration has led the Hearing Committee to the conclusion that revocation of Respondent's license is not the appropriate penalty in this case, because Respondent has convincingly demonstrated a willingness to do what is necessary to bring his practice into conformance with applicable standards. Specifically, Respondent has begun and partially completed a regimen of continuing medical education in addiction, pain management, record keeping and CPT coding as recommended initially by the Virginia Board. In addition, he has undertaken a continuing revamping of his patient encounter and treatment records that he believes will help him, if used properly and regularly, to fully and properly document his interactions, evaluations and treatments. (Ex. A)

The Hearing Committee believes that Respondent has the capability and motivation to improve the quality of his practice, and that with these continued educational efforts, and with proper supervision, he can practice medicine safely. Therefore, the Hearing Committee concludes that the appropriate penalty in this case is a one-year suspension of

Respondent's license, stayed, and replaced by three years probation, under terms set forth below.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York Medical license of **JOSEPH K. STATKUS, M.D.** is hereby **SUSPENDED** for a period of **ONE YEAR**.
2. The suspension is stayed, and replaced by **THREE YEARS PROBATION**, to commence upon the effective date of this order.
3. The terms of Respondent's probation are as follows:
 - A. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
 - B. Respondent shall, within 30 days, submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
 - C. Should Respondent desire to relocate to New York State to practice, he must inform the Director of his intention at least 30 days before his relocation, and provide verification of his intended employment, including all pertinent names, addresses and phone numbers.
 - D. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
 - E. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
 - F. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

- G. Respondent shall complete the continuing medical education (CME) program recommended by the Virginia Board, including, including any remaining portions of the requested 30 hours in pain management and addiction medicine, 10 hours in record keeping and 6 hours of CPT coding. Said continuing education program shall be subject to written approval of the Director of OPMC and be completed within the first year of probation.
- H. Should Respondent relocate to New York to practice, he shall do so during the term of this probation only in a setting where he works under the direct supervision of another physician, such as in a hospital, clinic or supervised group practice.
- I. Should he relocate to New York to practice, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
- J. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 6) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
- K. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
- L. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
- M. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order

The ORDER shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Hopewell Junction, New York
April 4, 2006

R M Mamtani - MD
RAVINDER MAMTANI, M.D.
Chairperson

JAGDISH M. TRIVEDI, M.D.
ANTIONETTE M. MYERS, R.N., COHN-S,
CCM

APPENDIX 1



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

IN THE MATTER	NOTICE OF
OF	REFERRAL
JOSEPH K. STATKUS, M.D.	PROCEEDING
CO-05-08-4037-A	

TO: JOSEPH K. STATKUS, M.D.
 11700 Caris Glenne Drive
 Herndon, VA 20170

JOSEPH K. STATKUS, M.D.
Dulles Pain Management
4455 Brookfield Corporate Drive
Suite 103
Chantilly, VA 20151

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 Procedure 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 21st day of December 2005, 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. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 12, 2005.

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 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 December 12, 2005, 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
November 10, 2005


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
JOSEPH K. STATKUS, M.D.
CO-05-08-4037-A

STATEMENT
OF
CHARGES

JOSEPH K. STATKUS, M.D., the Respondent, was authorized to practice medicine in New York state on January 2, 1990, by the issuance of license number 181169 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 20, 2005, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine, (hereinafter "Virginia Board), by an Order, (hereinafter "Virginia Order"), suspended Respondent's license to practice medicine for one (1) year, based on intentional or negligent conduct that causes or is likely to cause injury to a patient, conducting his practice in such a manner as to being a danger to the health and welfare of his patients or to the public, and performing an act likely to deceive, defraud, or harm the public.

B. The conduct resulting in the Virginia 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(4) (gross negligence);
4. New York Education Law §6530(5) (incompetence on more than one occasion);
5. New York Education Law §6530(6) (gross incompetence);
6. New York Education Law §6530(30) (abandoning or neglecting a patient under and in need of immediate professional care and without making reasonable arrangements for the continuation of such care); and/or

7. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS

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 suspended or having other disciplinary action taken, by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

DATED: *Nov. 10*, 2005
Albany, New York


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