

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

Public

October 21, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Savino, D.O.

REDACTED

Robert Bogan, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237-0032

Andrew M. Knoll, Esq.
Scolaro, Shulman, Cohen, Fetter &
Burstein, P.C.
507 Plum Street – Suite 300
Syracuse, New York 13204

RE: In the Matter of John Savino, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-196) 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. 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 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,
REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health (the Department), and authorized it to conduct disciplinary proceedings in matters of professional medical conduct.

Definitions of professional misconduct applicable to physicians, physician assistants and specialist assistants are set forth in Ed.L 6530 and 6531. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(b)&(d).

Pursuant to PHL 230(10)(p), a "direct referral procedure" is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner:	None
Petitioner exhibits:	Department Exhibits 1-5.
Witnesses for the Respondent:	John Savino, D.O.
Respondent exhibits:	Respondent Exhibits A-H.

A transcript of the proceedings was made. (Hearing transcript, pages 1-60.)

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent John Savino, D.O., was authorized to practice medicine in New York State on January 18, 1980 under license number 141036. (Department Exhibit 4.)
2. Pursuant to a final decision dated January 24, 2008, the State of Georgia, Composite State Board of Medical Examiners (the Georgia Board) publicly reprimanded the Respondent. The Georgia Board placed the Respondent's Georgia medical license on probation for five years. The board also required him, among other things, to pay a \$1,500 fine, complete twenty hours of continuing medical education in bariatric medicine and three hours in medical record keeping (Department Exhibit 5; Respondent Exhibit A.)
3. The Georgia Board determined that the Respondent's medical record keeping practices were below the minimum standards of acceptable and prevailing practice. (Department Exhibit 5, initial decision pages 12-14 of 17.)

THE CHARGES

The Petitioner presented records obtained from the Georgia Board of Medical Examiners. (Department Exhibit 5.) The Respondent acknowledged that he was disciplined in Georgia as was set forth in the Georgia Board's decision. (Respondent Exhibit A; Hearing transcript, page 9.) The particulars of the Georgia Board's findings and conclusions are set forth in an initial hearing decision dated November 19, 2007, and were adopted in the board's January 24, 2008 final decision. (Department Exhibit 5.)

The Petitioner charges that the Georgia Board's action establishes the following misconduct in New York pursuant to Ed.L 6530(9)(b)&(d), which provides in pertinent part:

- (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 of New York state.

...

- (d) 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.

The Petitioner alleges two specifications of misconduct based on the Georgia Board's decision.

Specification 1. The Petitioner charges that the determination of the Georgia Board establishes the Respondent violated Ed.L 6530(32), which defines professional misconduct, in pertinent part, as "failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

Specification 2. The Petitioner charges that the determination of the Georgia Board establishes the Respondent violated Ed.L 6530(3), which defines professional misconduct as "practicing the profession with negligence on more than one occasion."

HEARING COMMITTEE DETERMINATION

The Georgia Board found the Respondent guilty of the improper practice of unacceptable recordkeeping under a definition that was essentially the same as it is defined in Ed.L 6530(32). (Department Exhibit 5, pages 13-14 of 17.) Specification 1 is sustained.

The Petitioner charges that the findings of the Georgia Board also establish that the Respondent practiced with negligence on more than one occasion, in violation of Ed.L 6530(3). The Petitioner failed to explain how this charge was established, and it is not

apparent from the Georgia Board's decision, which dismissed all but the recordkeeping criticisms and did not address the question of negligence. (Department Exhibit 5, pages 9-14 of 17.) The Georgia Board explicitly stated "[t]he evidence concerning the quality of Respondent's "diagnosis" and "treatment"... was insufficient to meet Petitioner's burden of proof." (Department Exhibit 5, pages 12-13 of 17.) Specification 2 is dismissed.

The Georgia Board found the Respondent guilty of misconduct that would constitute unacceptable recordkeeping in New York, and took disciplinary action after a hearing. These facts establish misconduct in New York pursuant to Ed.L 6530(9)(b)&(d).

The Respondent began his medical career in the area of child psychiatry, practicing in Georgia and South Carolina from the mid 1970's to the mid 1990's. (Transcript, pages 18-19.) In 1998, after experiencing several years of bariatric treatment himself, the Respondent began treating weight control patients in Georgia. (Transcript, page 24.) Eventually, he did this on a full time basis, and established his own weight management practice called the Folkston Diet Medical Center P.C. (Transcript, page 28.)

The Georgia Board determined the Respondent's record keeping at the Folkston practice fell below the minimal standards of acceptable and prevailing practice. In particular, the Respondent failed to document such basic information as vital signs, weight or body mass index, failed to record adequate medical histories, and failed to perform physical examinations. The findings were made in three patient records.

The Respondent subsequently returned to child psychiatry and relocated to New York. Since 2006, he has worked at Samaritan Medical Center, in Watertown, New York. (Transcript, pages 32-33, 38-39.) He has never practiced bariatric medicine in New York. (Transcript, page 39.)

The hearing committee notes that its primary interest is protecting and serving the public. The committee was persuaded that the Respondent is needed in the Watertown area community, and is qualified to serve there. His practice includes children of military personnel stationed in Fort Drum, and he is the only child psychiatry resource in the area. (Transcript, pages 38-39; Respondent Exhibit A, c, d, e.)

The Respondent expressed a strong interest in continuing to serve this community. (Transcript, page 49.) He presented favorable evaluations of his work in the Watertown area. (Respondent Exhibit A, c-f.) A professor of psychiatry at the SUNY Upstate Medical University in Syracuse has reviewed the Respondent's records in the community he now serves, and found them adequate. (Respondent Exhibit A, d; Transcript, page 45.) The committee noted that Respondent is employed at an Article 28 hospital, which reviews his work on an ongoing basis and finds it adequate. (Respondent Exhibit A, c; Transcript, page 44.)

The committee credited the Respondent's sincere apology for his misconduct, and his statement that he has learned from his experience in Georgia. The Respondent is in compliance with the Georgia Board's directives. (Transcript, pages 37-38, 50.) He now has better mentors than he did in Georgia. (Transcript, pages 48-49.) He gave assurances of participating fully in continuing medical education (CME). (Transcript, pages 51-3.)

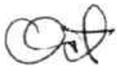
After considering the range of penalties available under PHL 230-a, the committee determined that no disciplinary action was required or necessary in this case. The hearing committee's vote was unanimous (3-0).

ORDER

IT IS HEREBY ORDERED THAT:

1. Specification 1 in the statement of charges, alleging unacceptable recordkeeping, is sustained.
2. Specification 2, alleging negligence, is not sustained and is dismissed.
3. The charges of misconduct under Ed.L 6530(b)&(d) are sustained.
4. No penalty or sanction will be imposed.
5. This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

 10/20/10

By:  REDACTED
Sheldon H. Putterman, M.D.
Chairperson

Petros Levounis, M.D., M.A.
Frances E. Tarlton

To: Robert Bogan, Esq., Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Andrew M. Knoll, Esq.
Scolaro, Shulman, Cohen, Fetter & Burstein, P.C.
507 Plum Street, Suite 300
Syracuse, New York 13204

John Savino, D.O.,
REDACTED

APPENDIX I

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



IN THE MATTER

NOTICE OF

OF

REFERRAL

JOHN SAVINO, D.O.
CO-09-03-1716-A

PROCEEDING

TO: JOHN SAVINO, D.O.
REDACTED

JOHN SAVINO, D.O.
Samaritan Medical Center
1575 Washington Street
Watertown, NY 13601

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 20th day of January, 2010, at 1:00 p.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.

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

December 2, 2009

REDACTED

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
JOHN SAVINO, D.O.
CO-09-03-1716-A

STATEMENT
OF
CHARGES

JOHN SAVINO, D.O., Respondent, was authorized to practice medicine in New York state on January 18, 1980, by the issuance of license number 141036 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 24, 2008, the State of Georgia, Composite State Board of Medical Examiners (hereinafter "Georgia Board"), by a Final Decision (hereinafter "Georgia Decision"), inter alia, PUBLICLY REPRIMANDED Respondent, required him to pay a \$1,500.00 fine and \$1,850.00 in administrative fees, and placed his license to practice medicine on five (5) years probation, subject to terms and conditions, that include, inter alia, that he complete twenty (20) hours of CME in Bariatric Medicine and three (3) hours in Medical Record Keeping, based on engaging in a practice determined to be below the minimal standards of acceptable and prevailing practice.

B. The conduct resulting in the Georgia 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(3) (negligence on more than one occasion);
and/or
2. New York Education Law §6530(32) (failure 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 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 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 New York state, in that Petitioner charges:

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

DATED: *December 2*, 2009
Albany, New York

REDACTED

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