

Nirav R. Shah, M.D., M.P.H.
Commissioner

NEW YORK
state department of
HEALTH

Public

Sue Kelly
Executive Deputy Commissioner

June 5, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Behrooz Tohidi, M.D.
Southwestern Surgical Associates
5604 SW Lee Boulevard – Suite 210
Lawton, Oklahoma 73505

Behrooz Tohidi, M.D.

REDACTED

RE: In the Matter of Behrooz Tohidi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-166) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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,

REDACTED
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 : DETERMINATION
: :
OF : AND
: :
BEHROOZ TOHIDI, M.D. : ORDER
CO-11-12-6802-A :
: BPMC #13-166
-----X

A Notice of Referral Proceeding and Statement of Charges, both dated February 28, 2013, were served upon the Respondent, Behrooz Tohidi, M.D. **ANDREW J. MERRITT, M.D. (Chair), JOHN D. THOMAS, II, M.D., and DAVID F. IRVINE, DHSc, R.P.A.-C,** 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Paul Tsui, Esq., Associate Counsel. The Respondent appeared pro se. A hearing was held on May 15, 2013. Evidence was received and witnesses sworn and heard 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 §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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b) in that he was 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 this state.

He is also charged with having violated New York Education Law §6530(9)(d) by having had his license to practice medicine suspended in another state after disciplinary action was instituted by said other state. A copy of the Statement of Charges is attached to this Determination and Order in Appendix

I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Behrooz Tohidi, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on October 5, 1979 by the issuance of license number 140192 by the New York State Education Department. (Exhibit #3).

2. On or about December 8, 2011, the Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision and Order (hereinafter "California Decision") accepted the surrender of Respondent's Physician's and Surgeon's Certificate No. A40405. This action was based upon findings that Respondent failed to properly manage a post-surgical leg length discrepancy and failed to advise the patient of other options to manage the discrepancy. (Exhibit #4).

3. The surgery underlying the California action was performed on January 13, 2005. In October, 2005, Respondent

relocated his medical practice to Georgia. In September 2008, Respondent joined the medical staff of Southwestern Medical Center, in Lawton, Oklahoma. He is the medical director of the total joint program at the medical center, and has full and unrestricted staff privileges. (Exhibit #6).

4. The California action was instituted on May 10, 2010, following the settlement of a civil suit arising out of the surgery. At that time, Respondent had not practiced medicine in California for nearly five years. (Exhibit #4; Exhibit #6).

5. The American Board of Orthopedic Surgery determined to take no action against Respondent's board certification in response to the surrender of his California license. (Exhibit #9).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence clearly established that the Respondent surrendered his California license as result of the commencement of disciplinary proceedings against him. The evidence demonstrates, and Respondent conceded, that he failed to accurately document his operative findings, and his measurements

regarding possible corrective measures. Respondent's conduct, had it occurred in New York, would constitute professional misconduct in violation of New York Education Law §6530(32 [failing to maintain a record which accurately reflects the evaluation and treatment of the patient]. Therefore, the First and Second Specifications of professional misconduct shall be sustained.

The Hearing Committee wishes to take note of the fact that this action is taken purely in response to the disciplinary proceeding instituted by the California Board, and does not reflect any evidence of new wrongdoing by Respondent.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent shall receive a censure and reprimand in full satisfaction of the charges. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

All of the evidence available to this Committee demonstrated that Respondent's California disciplinary action was based solely upon one surgical case. Respondent was not charged

demonstrated that Respondent's California disciplinary action was based solely upon one surgical case. Respondent was not charged with performing said surgery improperly, or without proper indication. Leg length discrepancy is a known complication of total hip replacement, and there are a variety of ways of addressing it, including lifts in the shoe of the shorter leg, or corrective surgery. Another viable option is to delay surgery until the opposing hip needs replacement. The most egregious complaints brought against Respondent by the California Board concern documentation short-comings.

Respondent freely admitted that his documentation was inadequate, and he described in depth the changes that he has made to his charting practices since this incident. He noted that he now documents all conversations with patients regarding complications, and no longer uses "canned" operative report templates. Instead, he dictates each operative report in detail following each surgery. He also testified that he does not release a patient from the operating suite until he is satisfied as the leg length measurements.

The Hearing Committee has significant concerns regarding the nature of this case. We are bound by the actions of the California Board action, and thus compelled to act on Respondent's New York medical license. However, the Committee has serious doubts as to whether this single patient case would

have even been raised to the level of a full disciplinary proceeding, had the surgery occurred in New York State. It is the considered opinion of this Hearing Committee that Respondent does not present any risk of danger to the public. Under the totality of the circumstances, the Hearing Committee unanimously determined that a censure and reprimand is the appropriate sanction to impose upon Respondent.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) are SUSTAINED;
2. Respondent shall be, and hereby is given a CENSURE AND REPRIMAND in full satisfaction of the charges.
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Marcellus, New York
6/5/13, 2013

REDACTED

~~ANDREW J. MERRITT, M.D. (CHAIR)~~

JOHN D. THOMAS, II, M.D.
DAVID F. IRVINE, DHSC, R.P.A.-C.

TO: Paul Tsui, Esq.
Associate Counsel
New York State Department of Health
Corning Tower, Room 2512
Albany, New York 12237

Behrooz Tohidi, M.D.
Southwestern Surgical Associates
5604 SW Lee Blvd., Suite 210
Lawton, OK 73505

Behrooz Tohidi, M.D.
REDACTED

APPENDIX I

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

IN THE MATTER
OF
BEHROOZ TOHIDI, M.D.
CO-11-12-6802-A

STATEMENT
OF
CHARGES

BEHROOZ TOHIDI, M.D., Respondent, was authorized to practice medicine in New York State on October 5, 1979, by the issuance of license number 140192 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 8, 2011, the Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision and Order (hereinafter "California Decision"), inter alia, had Respondent surrender his Physician's and Surgeon's Certificate No. A 40405 based on Respondent's gross negligence in his care and treatment of a patient in that he failed to properly manage a post-surgical leg length discrepancy and failed to advise the patient of other options to manage the discrepancy; Respondent's repeated negligence in his care and treatment of the patient during and after the surgery including failure to measure leg lengths during surgery, failing to properly assess and document leg length discrepancies following surgery, and failing to properly evaluate the patient's post-surgical complaints of leg length discrepancy; Respondent's failure to maintain adequate and accurate records in connection with his care and treatment of the patient.
- B. The conduct resulting in the California 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) (Practicing the profession with negligence on more than one occasion).

2. New York Education Law §6530(4) (Practicing the profession with gross negligence on a particular occasion).
3. New York Education Law §6530(5) (Practicing the profession with incompetence on more than one occasion).
4. New York Education Law §6530(6) (Practicing the profession with gross incompetence).
5. New York Education Law §6530(32) (Falling to maintain a record for the 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 disciplinary action taken or having surrendered his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender of license, revocation of license and/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: *Feb. 28*, 2013
Albany, New York

REDACTED

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