



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

December 31, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Maria Dolores Encarnacion, M.D.

Redacted Address

Robert Bogan, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180-2299

RE: In the Matter of Maria Dolores Encarnacion, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-233) 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 Signature

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
MARIA DOLORES ENCARNACION, M.D.

DETERMINATION

AND

ORDER

BPMC #09-233

A hearing was held on December 16, 2009, 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 21, 2009, were served upon the Respondent, **Maria Dolores Encarnacion, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **John B. Waldman, M.D.**, Chairperson, **Eleanor C. Kane, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing either in person or by 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.

BACKGROUND

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

education ("CME") in pain management and fifteen hours of CME in medical recordkeeping, based on her treatment of Patient A and Patient B (Petitioner's Ex. 5).

3. The Respondent treated Patient A from approximately September 8, 2006, to January 5, 2008. During the course of her treatment, the Respondent failed to provide a history of Patient A's pain syndrome, a supporting rationale for treatment or a rationale for prescribing Subutex (a Class III controlled substance). The Respondent's records lacked a sufficient description of Patient A's complaints and symptoms, a physical examination and diagnosis, an assessment, a treatment plan, and a description of treatment or services provided. The Respondent prescribed 90 dosage units of a controlled substance on October 14, 2006, but failed to record the name of the drug in Patient A's records. The Respondent wrote "Subutex refilled" in Patient A's records on or about June 16, 2007, but failed to note the amount prescribed. The Respondent telephonically ordered a prescription for 90 dosage units of Subutex for Patient A on May 1, 2007, and 72 dosage units of Subutex on July 12, 2007, but failed to note these prescriptions in Patient A's records. The Respondent failed to date a prescription for 90 dosage units of Subutex for Patient A, which was filled on June 18, 2007. (Petitioner's Ex. 5).

4. The Respondent treated Patient B from approximately July 11, 2006, to June 9, 2007. During the course of her treatment, the Respondent failed to provide a history of Patient B's pain syndrome, a supporting rationale for treatment, or a rationale for prescribing Subutex. The Respondent's records lacked a sufficient description of Patient B's complaints and symptoms, a physical examination and diagnosis, an assessment, a treatment plan and a description of treatment or services provided. The Respondent failed to date a prescription for 60 dosage units of Subutex for Patient B, which was filled on March 25, 2007. (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(3) - "Practicing the profession with negligence on more than one occasion;" and
- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

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 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..."

VOTE: (Sustained 3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing either in person or by counsel. Petitioner's Ex. 2, an Affidavit of Service, proves that the Respondent was personally

served with the Notice of Referral Proceeding and the Statement of Charges. The Administrative Law Judge ruled that the legal requirements for service of these papers had been met and that the hearing could proceed on the merits despite the absence of the Respondent.

As described in Findings of Fact 3 and 4, the Virginia Order discloses that the Respondent had been repeatedly negligent in her recordkeeping for two patients. The seriousness of this problem is exacerbated by the fact that the Respondent prescribed a Class III controlled substance, Subutex, to these patients. The Respondent prescribed Subutex to Patient A on several occasions. The charts for both patients failed to contain information about the patients' conditions that would explain or justify the prescription of this controlled substance.

Because the Respondent did not appear at the hearing, there is no evidence in the hearing record of mitigating circumstances, remorse, rehabilitation or any other factor that could be of use to the Respondent.

The Respondent will be censured and reprimanded. Her license to practice medicine will be suspended until she presents evidence that she has met all the requirements of the Virginia Order to the Director of the Petitioner's Office of Professional Medical Conduct (New York State Department of Health, Office of Professional Medical Conduct, Hedley Building, 433 River Street, Troy, New York, 12180). The Respondent's records demonstrate that she is not fully aware of the seriousness of prescribing a Class III controlled substance. To address this problem, if the Respondent's license is restored, a limitation will be placed on the license such that the Respondent will be prohibited from prescribing or administering controlled substances.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent, Maria Dolores Encarnacion, M.D., is censured and reprimanded for repeated acts of negligence and inadequate recordkeeping.
2. The Respondent's license to practice medicine is suspended until she provides evidence to the Director of the Office of Professional Medical Conduct that she has complied with all requirements of the Virginia Order.
3. If the Respondent's license to practice medicine is restored to active status, the license will be limited such that the Respondent will be prohibited from prescribing or administering controlled substances.
4. 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 30, 2009

Redacted Signature

/ **John B. Waldman, M.D.**
Chairperson

Eleanor C. Kane, M.D.
Thomas W. King, Jr., M.P.A., P.E.

APPENDIX I

EXHIBIT
1
EV 12/16/09 JW

IN THE MATTER
OF
MARIA DOLORES ENCARNACION, M.D.
CO-09-02-0811-A

NOTICE OF
REFERRAL
PROCEEDING

TO: MARIA DOLORES ENCARNACION, M.D.

Redacted Address

MARIA DOLORES ENCARNACION, M.D.

Redacted Address

MARIA DOLORES ENCARNACION, M.D.

Life Center of Galax
112 Painter Street
Galax, VA 24333

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 16th day of December, 2009, 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.

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 Redacted Signature

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

Oct. 21, 2009

Redacted Signature

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
MARIA DOLORES ENCARNACION, M.D.
CO-09-02-0811-A

STATEMENT
OF
CHARGES

MARIA DOLORES ENCARNACION, M.D., Respondent, was authorized to practice medicine in New York state on July 2, 1984, by the issuance of license number 158891 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 14, 2009, the State of Virginia, Board of Medicine (hereinafter "Virginia Board"), by a Consent Order, (hereinafter "Virginia Order"), subjected Respondent's license to practice medicine to terms and conditions that include, inter alia, that she complete fifteen (15) hours of CME in pain management and medical recordkeeping, based on Respondent, during the course of her treatment of Patient A from approximately September 8, 2006 to January 5, 2008, failing to provide a history of Patient A's pain syndrome or a supporting rationale for treatment, and/or rationale for prescribing Subutex (C-III); her records lacked a sufficient description of patient's complaints and symptoms, a physical examination and diagnosis, assessment, treatment plan, or description of treatment or services provided; prescribing ninety (90) dosage units of a controlled substance on October 14, 2006; however, failing to provide the name of the drug prescribed in Patient A's records; writing "Subutex refilled" in Patient A's records on or about June 16, 2007; however, failing to note the amount prescribed; and telephonically ordering a prescription for ninety (90) dosage units of Subutex for Patient A on May 1, 2007, and seventy-two (72) dosage units of Subutex on July 12, 2007; however, failing to note these prescriptions in Patient A's records; during the course of her treatment of Patient A, failing to date a prescription for ninety (90) dosage units of Subutex for Patient A, which was filled on June 18, 2007; and during the course of her treatment of Patient B from approximately July 11, 2006 to June 9, 2007, failing to provide a history of Patient B's pain syndrome or a supporting rational for treatment, and/or rationale for prescribing Subutex (C-III); and her records lacked a sufficient description of patient's complaints and symptoms, a physical examination and diagnosis, assessment, treatment plan, or description of treatment or

services provided; and during the course of her treatment of Patient B, failing to date a prescription for sixty (60) dosage units of Subutex for Individual B, which was filled on March 25, 2007.

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 section 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) (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 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, in that Petitioner charges:

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

DATED: *Oct. 21*, 2009
Albany, New York


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