

NEW YORK
state department of
HEALTH

PUBLIC

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

Sue Kelly
Executive Deputy Commissioner

October 2, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Kent Finley III, M.D.

REDACTED

Robert Kent Finley III, M.D.
1540 Spring Valley Drive
Huntington, West Virginia 25704

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Robert Kent Finley III, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-204) 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., 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**

**IN THE MATTER
OF
ROBERT KENT FINLEY III, M.D.
C0-11-93-A**

DETERMINATION

AND

ORDER

COPY

BPMC #12-204

A hearing was held on August 16, 2012, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges, dated April 30, 2012, were served upon the Respondent, **Robert Kent Finley III, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D., Chair, Michael J. Reichgott, M.D., Ph.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. **David A. Lenihan, Esq.,** Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.,** General Counsel, by **Michael G. Bass, Esq.,** of Counsel. The Respondent, **Robert Kent Finley III, M.D.** did appear, *pro se*. Evidence was received and a transcript of these proceedings was 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 §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.

Respondent is also charged with violating 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.

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: Robert Kent Finley III, 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. The Respondent, **Robert Kent Finley III, M.D.** did appear, *pro se*, and was duly served with process. (Petitioner's Exhibit 2)
2. **Robert Kent Finley III, M.D.**, the Respondent, was authorized to practice medicine in New York State on April 14, 1989, by the issuance of license number 177992 by the New York State Education Department. (Petitioner's Ex. 3)
3. On or about June 30, 2011, the Iowa Board of Medicine (hereinafter "Iowa Board"), by SETTLEMENT AGREEMENT, CITED Respondent for failing to conform to the minimal standard of practice of medicine in Iowa, and WARNED that such practice in the future may result in further formal disciplinary action, including suspension or revocation

of his Iowa medical license. The Iowa Board had filed formal disciplinary charges against Respondent alleging that he failed to conform to the minimal standard of care in his treatment of eight patients between January 3, 2005 and January 11, 2006. (Petitioner's Ex. 4)

4. The conduct resulting in the Iowa 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 Sec. 6530(3) (negligence on more than one occasion)

and/or;

2. New York Education Law Sec. 6530(5) (Incompetence on more than one occasion).

VOTE OF THE HEARING COMMITTEE

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..." ,

VOTE: Sustained (3-0)

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..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, *pro se*. The Administrative Officer, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process and that jurisdiction had been established over the Respondent. There was no dispute about jurisdiction.

The Administrative Officer noted that the Respondent appeared without counsel and he advised him of the right to representation. The Respondent indicated that he had discussed this case with an attorney in New York and was prepared to go forward on his

own and did not wish the services of an attorney. (T. 4) Accordingly, the hearing proceeded with the Respondent *pro se*.

In his defense, the Respondent acknowledged the difficulties he had with serious complications after surgery with several patients in Des Moines and that allegations of sub-standard care were made. (T. 17) The Respondent indicated that he appreciated the discipline process and has learned from it. (T. 14) Dr. Finley testified that in his thirty-one years of practice, no malpractice moneys have been paid on his behalf and that he recognizes that a medical license is a privilege and not a right. (T. 15)

Dr. Finley indicated that he had been trained in surgical oncology at Roswell Park in New York and then did a residency at the Geisinger Medical Center in Danville, Pennsylvania.

The panel was concerned that the record in this case is showing that six of the eight Veteran's Administration patients cited in the record (Exhibit 4) and treated by the Respondent died under his care. (T. 42) The panel noted the remediation and continuing education that the Respondent has subsequently completed, but was concerned for the health and safety of patients in New York should the Respondent ever decide to return to practice in New York.

While the Department did not ask for a revocation, the panel was of the opinion that something more than a Censure was warranted by the facts in this case. The panel determined that if the Respondent wished to resume practice in New York, he must first give the Director of OPMC 90 day's written notice in advance, so that the conditions and parameters of the probation can be set forth by OPMC. This three year probation shall be tolled until such time as the Respondent may return to New York.

The panel considered the full range of penalties available in the case and determined that, for the present, a Censure and Reprimand is warranted by the facts in this case. In addition to the Censure, the panel determined that, in the event the Respondent should return to New York to practice, there should also be a three year term of probation, with terms to be determined by the Director of OPMC.

The panel determined that such a period of probation is necessary to protect the citizens of New York, should Respondent choose to return to practice in this state. Accordingly, the panel determined that the Respondent should be required to give the Director of OPMC 90 days written notice prior to his return to New York to practice, so that the Director may evaluate the Respondent and fashion an appropriate probation to protect the patients of New York.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The Respondent is censured and reprimanded for conduct resulting in the stipulated settlement of the Iowa disciplinary action, the basis of which would constitute misconduct under the laws of New York State.
3. Respondent is placed on a term of probation for three years. The terms of the probation are to be determined by the Director of OPMC.

4. The Respondent shall give the Director of OPMC 90 days written notice prior to a return to New York to practice.
5. The probation period is to be tolled until such time as Respondent may return to practice in New York.
6. 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
October 10, 2012



Lyon M. Greenberg, M.D., Chair

Michael J. Reichgott, M.D., Ph.D.
David F. Irvine, DHSc, R.P.A.-C.,

To:

Robert Kent Finley III, M.D.

REDACTED

Robert Kent Finley III, M.D.
1540 Spring Valley Drive
Huntington, WV 25704

Michael G. Bass, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Coming Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER
OF
ROBERT KENT FINLEY III, M.D.
CO-11-07-4093-A

STATEMENT
OF
CHARGES

ROBERT KENT FINLEY III, M.D., Respondent, was authorized to practice medicine in New York state on April 14, 1989, by the issuance of license number 177992 by the New York State Education Department.

FACTUAL ALLEGATIONS

A On or about June 30, 2011, the Iowa Board of Medicine (hereinafter "Iowa Board"), by SETTLEMENT AGREEMENT, CITED Respondent for failing to conform to the minimal standard of practice of medicine in Iowa, and WARNED that such practice in the future may result in further formal disciplinary action, including suspension or revocation of his Iowa medical license. The Iowa Board had filed formal disciplinary charges against Respondent alleging that he failed to conform to the minimal standard of care in his treatment of eight patients between January 3, 2005 and January 11, 2006.

B. The conduct resulting in the Iowa 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 Sec. 6530(3) (negligence on more than one occasion) and/or;
2. New York Education Law Sec. 6530(5) (incompetence on more than one occasion).

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 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 B.

DATED: *April 30*, 2012
Albany, New York

REDACTED

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

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



IN THE MATTER

OF

ROBERT KENT FINLEY III, M.D.
CO-11-07-4093-A

NOTICE OF
REFERRAL
PROCEEDING

TO: Robert Kent Finley III, M.D.
REDACTED

Robert Kent Finley III, M.D.
1540 Spring Valley Drive
Huntington, WV 25704

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 18th day of July, 2012, at 10:30 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 _____

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

April 30, 2012

REDACTED

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

Inquiries should be addressed to:

Michael G. Bass
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282