



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**

August 8, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Anthony C. Benigno, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2509  
Albany, New York 12237-0032

Gary A. Stenswold, M.D.  
15 Winston Lane  
Garrison, New York 10524

**RE: In the Matter of Gary A. Stenswold, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-213) 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), 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 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.

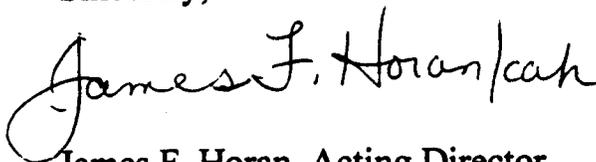
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "James F. Horan/cak". The signature is written in black ink and is positioned above the typed name.

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-**

**GARY A. STENSWOLD, M.D.**

**Respondent**

**DETERMINATION**

**AND**

**ORDER**

**BPMC 03-213**

A Notice of Hearing and Statement of Charges, dated April 7, 2003, were served upon the Respondent, Gary A. Stenswold, M.D. **DONALD CHERR, M.D. (Chair), JOHN B. WALDMAN, M.D. and STEPHEN E. LYONS, R.P.A.-C.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by **Donald P. Berens, Jr., Esq., General Counsel, Anthony C. Benigno, Esq., Associate Counsel**. The Respondent appeared pro se. Evidence was received, statements were heard and transcripts of these proceedings were made.

After consideration of the entire record, the Committee issues this Determination and Order.

## **STATEMENT OF CASE**

This case was brought pursuant to Public Health Law § 230(10). In this instance the charges alleged the Respondent violated conditions imposed upon him under an Order of Conditions dated December 1, 2000, which was issued pursuant to a Stipulation and Application executed by the Respondent on November 20, 2000. The allegations charging a violation of that Order are specifically set forth in the Statement of Charges, a copy of which is attached to and made a part of this Determination and Order as Appendix One.

## **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 exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Gary A. Stenswold, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on or about July 28, 1970, by the issuance of license number 106754 by the New York State Education Department. (Ex. 3)

2. On or about November 20, 2000, the Respondent signed a Stipulation and Application requesting the State Board for Professional Medical Conduct (hereinafter "the Board") to decline to bring misconduct charges against him. In consideration the Respondent agreed to have the Board issue an Order of Conditions (hereinafter "the Order") imposing a number of conditions on the Respondent's practice of medicine. (Ex. 5)

3. The Order imposed a condition on the Respondent that he maintain current registration of his license to practice with the New York State Education Department for a term of 5 years. The Respondent has not maintained his registration with the New York State Education Department (T. 23, 26,38; Exs. 2,3 & 5)

4. The Order imposed a condition on the Respondent that he respond promptly to each and every request from the Office of Professional Medical Conduct (hereinafter "OPMC") for written verification of his compliance with the terms of the Order. On or about December 13, 2000 and March 9, 2001 the Respondent was sent requests for information from OPMC regarding his compliance with the Order. The Respondent did not respond to these requests. (T. 10-11, 23, 26, 38; Exs. 5, 9, 9A, 10 &11)

5. The Order imposed a condition on the Respondent that he propose and the Director of the OPMC approve in writing a qualified health care professional to serve as the Respondent's Sobriety Monitor. The Respondent has not submitted to OPMC, the name of anyone to serve as his Sobriety Monitor. (T. 12, 24, 26, 38; Ex. 5)

6. The Order imposed a condition on the Respondent that he propose and the Director of the OPMC approve in writing a qualified health care professional under whom he shall continue in treatment for so long as the health care professional determines it is necessary. The Respondent has not submitted to OPMC, the name of anyone by whom he is being treated. (T. 26; 34, 38; Ex. 5)

7. The Order imposed a condition on the Respondent that he enroll in a contract with the Committee for Physicians Health and comply with the contract. The Respondent has not done this. (T. 13, 26, 34, 38; Exs. 5 & 7)

## CONCLUSIONS

The following conclusions were made pursuant to the Findings of Fact listed above. The Committee concluded that the following Factual Allegations were proven by a preponderance of the evidence (the paragraphs noted refer to those set forth in the Statement of Charges, Factual Allegations). The citations in parentheses refer to the Findings of Fact (supra), which support each Factual Allegation:

**Paragraph A.**: (2);

**Paragraph B.**: (3);

**Paragraph C.**: (4) except for that part of the paragraph which alleges the Respondent was sent a request on May 14, 2001;

**Paragraph D.**: (5);

**Paragraph E.**: (6);

**Paragraph F.**: (7).

The Committee further concluded that the following Specifications should **be sustained**. The citations in parentheses refer to the Factual Allegations from the Statement of Charges, which support each specification:

## VIOLATION OF A CONDITION OR LICENSE LIMITATION

**First through Fifth Specifications:** (Paragraphs A. through E.)

### **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 Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that the Respondent has not complied with the conditions imposed upon his license by the Order of December 1, 2000. This Order was issued based upon a Stipulation and Application the terms of which were agreed to by the Respondent.

The Committee found the Respondent's reasons for failing to comply with the terms of the Order were not persuasive and not rational. The Respondent's repeated reason for his noncompliance was that he was "not practicing" medicine therefore he did not have to comply with the terms of the Order. The Committee deemed this argument not credible since the Order contained no language which relieved the Respondent of his obligations under the Order should he not be practicing. No reasonable explanation for noncompliance was presented. It is the Respondent's responsibility to abide by the document that he signed. Although the Committee is sensitive to the circumstances of impaired physicians, impairment does not obviate compliance with the terms of a disciplinary settlement agreed to by the Respondent with the New York Board.

### **DETERMINATION AS TO PENALTY**

The Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New

York State should be **revoked**. 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.

The Committee views the Respondent's conduct with respect to his noncompliance with the terms of the Order as a serious breach and represents his lack of willingness to accept the authority of the New York Board. Furthermore, the Committee notes the Respondent's failure to recognize the significance his impairment had on his practice of medicine during the years he practiced while addicted to a controlled substance.

The Committee has a duty to protect the public in New York. The Committee felt that revoking the Respondent's license was the proper way to carry out that duty.

**ORDER**

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

1. The First through Fifth Specifications of professional misconduct, as set forth in the Statement of Charges (Appendix I) are **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

**DATED: Rochester, New York**

*7 August*, 2003



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**DONALD CHERR, M.D. (Chair)**

**JOHN B. WALDMAN, M.D.**

**STEPHEN E. LYONS**

**TO: Anthony C. Benigno, Esq.**  
Associate Counsel  
New York State Department of Health  
ESP – Corning Tower  
Room 2509  
Albany, New York 12237-0032

**Gary A. Stenswold, M.D.**  
15 Winston Lane  
Garrison, NY 10524

**APPENDIX ONE**

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

IN THE MATTER  
OF  
GARY A. STENSWOLD, M.D.

STATEMENT  
OF  
CHARGES

Gary A. Stenswold, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 28, 1970, by the issuance of license number 106754 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about December 1, 2000, the New York State Board for Professional Medical Conduct issued an Order of Conditions pursuant to New York State Public Health Law §230, attached hereto and made a part hereof as Exhibit 1, wherein Gary A. Stenswold, M.D., Respondent, among other things, agreed to comply with various conditions.
- B. The Order imposed a condition that Respondent shall maintain current registration of his license with the New York State Education Department, Division of Professional Licensing Services, and pay all registration fees. This condition is effective for the term of the Order, a minimum of five years. Respondent has not been registered since August 31, 2000.
- C. Term three of the Order imposed a condition that Respondent shall respond promptly to each and every request from OPMC for written verification of his compliance with the terms of the Order. Respondent was sent requests by OPMC for information regarding his compliance with the terms of the order on December 13, 2000, March 9, 2001, and May 14, 2001. Respondent did not respond to those requests.

- D. Term eight of the Order imposed a condition that Respondent shall be monitored by a qualified health care professional (Sobriety Monitor) proposed by him and approved in writing by the Director of the Office of Professional Medical Conduct (OPMC). The Respondent has not submitted to OPMC a proposed sobriety monitor.
- E. Term nine of the Order imposed a condition, among others, that Respondent, "...shall continue in treatment with a health care professional proposed by Licensee and subject to the written approval of the Director of OPMC, for as long as the health care professional determines it is necessary. Said health care professional shall be familiar with Licensee's history of substance abuse with this Order, and with the conditions of practice set forth in or annexed to the Order." Respondent has not submitted the name of a health care professional. OPMC has not approved a health care professional to provide treatment to Respondent.
- F. Term eleven of the Order imposed a condition that the Respondent enroll in a contract with the Committee for Physicians Health (CPH) and comply with the contract. Respondent failed to comply with his contract with CPH.

**SPECIFICATIONS OF CHARGES**

**FIRST THROUGH FIFTH SPECIFICATIONS**  
**HAVING VIOLATED A CONDITION IMPOSED ON LICENSEE**  
**PURSUANT TO PHL SECTION 230**

Respondent is charged with professional misconduct under N.Y. Education Law §6530(29) by reason of his having violated a condition imposed upon him pursuant to Section 230 of the Public Health Law, in that Petitioner charges:

1. The facts in paragraphs A and B.
2. The facts in paragraphs A and C.
3. The facts in paragraphs A and D.
4. The facts in paragraphs A and E.
5. The facts in paragraphs A and F.

DATED: April 7, 2003  
Albany, New York

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

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