



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Public

March 5, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gulnaz Cowder, M.D.
P.O. Box 4341
Bennington, Vermont 05201

Gulnaz Cowder
301 Oriental Boulevard - #2G
Brooklyn, New York 11235

Robert Bogan, Esq.
NYS Department of Health
Hedley Building - 4th Floor
433 River Street
Troy, New York 12180

Thaddeus R. Lorentz, Esq.
Lorentz, Lorntz & Harnett
26 Court Street
Rutland, Vermont 05701

RE: In the Matter of Gulnaz Cowder, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-51) 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), 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 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.

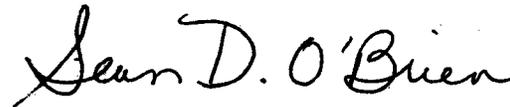
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

COPY

**IN THE MATTER
OF
GULNAZ COWDER, M.D.**

DETERMINATION

AND

ORDER

BPMC #07-51

A hearing was held on February 21, 2007, 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 February 2, 2007, were served upon the Respondent, **Gulnaz Cowder, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **James D. Hayes II, M.D.**, Chairperson, **Nisha K. Sethi, M.D.**, and **Mr. Irving Caplan**, 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 appeared at the hearing and was represented by **Lorentz, Lorentz & Harnett**, by **Thaddeus R. Lorentz, Esq.**, of 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

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 Section 6530(9)(b) and (d). 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:

Gulnaz Cowder, M.D.
Steven A. Fayer, 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. Gulnaz Cowder, M.D., the Respondent, was authorized to practice medicine in New York State on April 20, 1999, by the issuance of license number 213754 by the New York State Education Department (Petitioner's Ex. 6).

2. On December 6, 2006, the Vermont Board of Medical Practice ("Vermont Board"), by a Stipulation and Consent Order ("Vermont Order"), accepted the surrender of

the Respondent's license to practice medicine. The surrender was based on the Respondent, a psychiatrist, having changes made to medical records in a manner inconsistent with Vermont's professional standards regarding removal and insertion of content after the initial creation of the record; the prescribing of Drug Enforcement Administration Schedule II and IV controlled substances to family members that was not based on a bona fide medical history and examination and not entered in a patient medical record; on two occasions, violating Vermont's professional boundary requirements by having protracted telephone contact with a male patient to whom she had provided her cell phone and pager numbers, for legitimate professional reasons, without entering any information in the chart regarding these telephone calls; violating Vermont's professional boundary requirements by allowing the father and the mother of a ten year-old patient to become patients without noting in the medical records that the parents were informed that they were being treated in the context of family therapy only and that treatment of three family members could create problems regarding medical confidentiality, differences in personal objectives and needs, trust, and the best interests of each patient, nor do her records include written informed consents from the parents regarding these issues; and violating Vermont's professional boundary requirements by entering into discussions with a patient regarding employment in her office while the patient remained in the Respondent's care. (Petitioner's Ex. 7).

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..."

In the Statement of Charges, the Respondent also was accused of professional misconduct pursuant to New York Education Law Section 6530(17) - "Exercising undue influence on the patient, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the licensee or of a third party..." The Petitioner, however, withdrew this charge during the hearing.

The Respondent was also charged with a violation of 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. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of eighteen years..." For reasons stated below, this Hearing Committee has determined that none of the record keeping practices that were the subject of criticism in the Vermont proceeding would constitute professional misconduct in New York State had these acts occurred in New York State.

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 surrendered her 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 would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

After the Petitioner withdrew the charge regarding the exercise of undue influence over a patient, the charges that remained were negligence on more than one occasion and inadequate record keeping. This Hearing Committee agrees with the Petitioner that the Respondent committed negligence on more than one occasion. We do not believe that this hearing record supports a conclusion that the Respondent's medical record keeping practices constituted professional misconduct.

The inadequate record keeping charge was based in part on the Respondent having had a member of her staff change inaccurate entries on a medical questionnaire that had been filled out by the mother of a minor patient. The mother signed a statement verifying that she had authorized the revision at the time that it had been made (Respondent's Ex. H). The Respondent did not place an entry in her chart explaining the revision. This may constitute professional misconduct in Vermont, but this Hearing Committee is unaware of any reason to conclude that it is professional misconduct in New York State. There is no evidence that this revision was an attempt to conceal a mistake by the Respondent and no evidence that it caused her charts to become an incomplete or misleading record of the condition of the patient or the care provided to the patient. The

Respondent's persuasive testimony proved that the revision caused no problem of any type.

The Respondent failed to make entries in her medical chart for telephone conversations that she had with a patient. These telephone conversations were during times that her office was not open. The Respondent made these calls to the patient in response to messages left by him that he needed to talk to her. Again, this may be professional misconduct in Vermont, but there is inadequate evidence that it is professional misconduct in New York State. There is no evidence that anything new or significant was discussed in these telephone conversations. There is no evidence that the Respondent's assessment of the patient or her treatment plan changed in any way because of these conversations. The failure to make chart entries for these telephone conversations may constitute less than ideal record keeping, but it is not serious enough to constitute professional misconduct.

The Respondent was also faulted in Vermont for her medical record regarding treatment provided to a child and her parents. The Vermont Board found fault with the Respondent's failure to record in her medical records that she informed the parents that they were her patients only in the context of family therapy, and that there were potential difficulties and problems possible when a therapist treats more than one member of a family. (There was no charge that these concerns were not discussed with the parents and the Respondent testified credibly that they were discussed.) The Respondent was also faulted for failing to have the parents sign informed consents concerning the possible problems. Again, this may be professional misconduct in Vermont, but the hearing record does not support a conclusion of professional misconduct under New York State standards. There is no evidence in the record that such a consent form is required under New York State standards in such a situation. The medical records would have been

better had they included information that the Respondent spoke to the parents about the subjects of the Vermont Board's concern, but there is no basis in the record that these absences from the charts were serious enough to constitute inadequate record keeping or the type of omission that constitutes professional misconduct.

The Petitioner argued that the charge of negligence on more than one occasion is supported by several prescriptions that the Respondent wrote for her husband. (They were subsequently divorced.) The Hearing Committee affirms this charge. At the insistence of her husband, the Petitioner wrote approximately six prescriptions for him for two controlled substances, Ritalin and Adderall, during a period of a few months. Because her husband wanted no one to know that he was taking these medications, he had the Respondent write the prescriptions in the names of the Respondent's father and her sister. The Respondent did not have a legitimate physician-patient relationship with her husband.

The issue remaining in this case is the penalty to be imposed for the writing of these prescriptions. The Petitioner declined to recommend a penalty, instead stating that the Hearing Committee should determine what penalty, if any, is necessary at the present time. The Petitioner stated that a revocation of the Respondent's license to practice medicine did not appear to be necessary. The Hearing Committee has determined that there is no need to impose any penalty on the Respondent.

Although it is obvious that the Respondent should not have written these prescriptions, there are exceptional mitigating circumstances present in this case. The Respondent lived in fear of her husband. These fears were not without substance. Her husband beat her on more than one occasion. The final beating, administered shortly after her husband informed the Respondent that he had decided to kill her, resulted in broken bones and hospitalization.

The compelling mitigating circumstances concerning the violence present in the Respondent's marriage lead to the conclusion that there is no reason to expect the Respondent to repeat the illegal prescribing practices. She has divorced her husband and it is extremely unlikely that she will ever again find herself in such a difficult and frightening situation.

This Hearing Committee observed the Respondent throughout her testimony and found her to be a credible witness and a physician who understands and, except in one most difficult and unique circumstance, adheres to the responsibilities of her profession. We are convinced that her continued practice of medicine will not be a danger to the people of New York State. The impression that we received from her testimony is corroborated by the evidence that the Respondent introduced. Letters from Mark J. Sedler, M.D. (Respondent's Ex. A), Steven A. Fayer, M.D. (Respondent's Ex. B and J), Benito Manuel, M.D. (Respondent's Ex. C), Robert L. Van Uitert, M.D. (Respondent's Ex. D), and Bonnie Herr, M.D. (Respondent's Ex. E), are persuasive evidence in support of the conclusion that the Respondent is a responsible, skilled and caring psychiatrist. Dr. Fayer also testified credibly to the same effect.

This Hearing Committee, after reviewing the categories of penalties that can be imposed for professional misconduct pursuant to Public Health Law Section 230-a, can find no reason for imposing any of them. The Respondent should be and will be allowed to practice medicine in New York State without restriction.

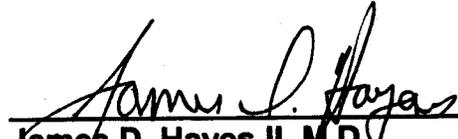
ORDER

IT IS HEREBY ORDERED THAT:

1. No penalty is assessed against the Respondent.

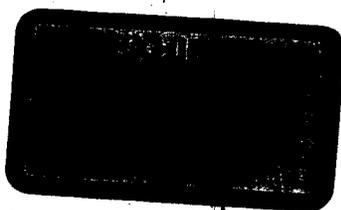
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Endwell, New York
March 1, 2007


James D. Hayes II, M.D.
Chairperson

Nisha K. Sethi, M.D.
Irving S. Caplan

APPENDIX I



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

IN THE MATTER
OF
GULNAZ COWDER, M.D.
CO-06-03-1717-A

NOTICE OF
REFERRAL
PROCEEDING

TO: GULNAZ COWDER, M.D.
P.O. Box 4341
Bennington, VT 05201

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 21st day of February, 2007, 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, which 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. You may produce evidence or sworn testimony on your behalf. Such evidence 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 which 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. SEAN D. O'BRIEN, 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 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 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

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 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

Feb. 2, 2007


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
GULNAZ COWDER, M.D.
CO-06-03-1717-A

STATEMENT
OF
CHARGES

GULNAZ COWDER, M.D., Respondent, was authorized to practice medicine in New York state on April 20, 1999, by the issuance of license number 213754 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 6, 2006, the State of Vermont, Board of Medical Practice, (hereinafter "Vermont Board"), by a Stipulation and Consent Order (hereinafter "Vermont Order"), accepted the voluntary surrender of Respondent's license to practice medicine, based on Respondent, a psychiatrist, having changes made to medical records in a manner inconsistent with generally accepted professional standards that include removal and/or insertion of content without written indication that such changes had been made; during 2005 - 2006 prescribing DEA Schedule II and IV controlled substances to family members that was not based on a bona fide medical history and exam and not entered in a patient medical record; professional boundary violations on two or more occasions; on two or more occasions in 2005, repeated and protracted telephone contact with a male patient to whom she provided her cell phone and page number, purportedly for legitimate medical purposes, but failing to enter any information in the patient's medical records regarding such contacts; in April 2005, allowing the father of a patient who was less than ten (10) years of age to become a patient, wherein her notes do not reflect that the patient was informed that his treatment was only in the context of family therapy; in 2005 accepting the child's mother as a patient, wherein her notes do not reflect that the patient was informed that her treatment was only in the context of family therapy; deciding to simultaneously treat the child, father, and mother as individual patients creating an ethically complex situation wherein her records do not indicate that she addressed with each of the patients her possible professional conflicts in providing psychiatric care for three related patients with regard to (a) medical confidentiality, (b) difference in personal objectives and needs, (c) trust, and (d) the best interests of each patient, or recognition on her part of

appropriate ethical requirements related to her care of these patients and no discussion or reference to her decision as a psychiatrist to care simultaneously for each of these related individuals nor any disclosure and discussion by Respondent with the patients regarding possible ethical and clinical conflicts, documentation of any warnings in this regard, or any written informed consents by the patients regarding possible conflicts; and entering into discussions with a patient regarding employment in her office while the patient remained in Respondent's care.

B. The conduct resulting in the Vermont 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} ~~no~~ more than one occasion);
 2. New York Education Law §6530(17) (exercising undue influence on the patient);
- and/or
3. 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 State Education Law §6530 (9)(d) by having surrendered her 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 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: *February 2*, 2007
Albany, New York


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