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Commissioner

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Executive Deputy Commissioner

May 12, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Roger Phillips, M.D.
[redacted]

Roger Phillips, M.D.
[redacted]

Jude Mulvey, Esq.
NYS Department of Heatlh
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Roger Phillips, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-121) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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. 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 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., 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,

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 ROGER PHILLIPS, M.D. CO-14-02-1050A	DETERMINATION AND ORDER BPMC #15-121

COPY

A hearing was held on April 22, 2015 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 9, 2015, were served upon the Respondent, **Roger Phillips, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Robert A. Catalano, M.D., M.B.A.**, Chair, **Mehdi A. Khan, D.O.** and **Gail S. Homick Herrling,** 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 **Jude B. Mulvey, Esq.**, of Counsel. The Respondent, **Roger Philips, M.D.,** did not appear, although duly served. Evidence was received 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 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 three sections of the Education Law. First the Respondent is charged with violation of New York Education Law §6530(9)(b) by having been found guilty of improper professional practice 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.

Second, the Respondent is charged with violation of New York Education Law §6530(9)(d) by having his license to practice medicine revoked by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation would, if committed in New York state, constitute professional misconduct under the laws of New York state.

Third, the Respondent is charged with violation of New York Education Law §6530(9)(a)(iii) by having been convicted of an act constituting a crime under the laws of another jurisdiction, and which, if committed in this state, would have constituted a crime under New York state law.

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:	None

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. Roger Philips, M.D., the Respondent, did not appear at the hearing and was duly served and notified of the hearing, by personal service of process, on February 17, 2015. (Petitioner's Exhibit 2.)

2. Roger Phillips, M.D., the Respondent, was authorized to practice medicine in New York State on November 6, 1987, by the issuance of license number 172928 by the New York State Education Department. (Petitioner's Ex. 3)

3. On or about February 20, 2014, the Virginia Board of Medicine (hereinafter the "Virginia Board") summarily suspended Respondent's license to practice medicine in Virginia, finding that his continued practice of medicine constituted a substantial danger to the public health or safety. The summary action was based upon a Statement of Particulars alleging that Respondent violated applicable standards of care in his care of approximately twenty-seven (27) patients by various conduct including, among others, exploiting the patient/physician relationship for personal gain, inappropriate prescribing practices, engaging in an egregious pattern of disruptive behavior or interaction in a health care setting, failure to request or obtain records from previous health care practitioners, failure to make appropriate referrals and/or consult with other practitioners, failure to adequately respond to and/or address drug seeking behavior that indicated abuse or misuse of medications, failure to obtain appropriate diagnostic tests, failure to enforce pain management contracts with patients, failure to perform adequate physical examinations, failure to maintain adequate records and the deliberate alteration of medical records.

4. On or about July 18, 2014, following a hearing on the above charges, the Virginia Board revoked Respondent's license to practice medicine by Order ("Virginia Order"). The Virginia Order of revocation was based upon the Virginia Board's findings that, among other things, Respondent conducted his practice in such a manner as to be a danger to the health and welfare of his patients or public on at least eight occasions;

committed at least seven instances of intentional or negligent conduct; performed acts likely to deceive, defraud or harm the public on at least eight occasions; violated Virginia or federal statutes or rules regulating the manufacture, distribution, dispensing or administration of drugs on at least four occasions; practiced fraudulently or made false statements in the practice of the healing arts; practiced under a false or assumed name; demonstrated conduct contrary to ethical standards; inappropriately prescribed and/or prescribed medications without adequate basis; engaged in inappropriate sexual conduct; exploited the practitioner/patient relationship for personal gain; failed to maintain adequate patient records in at least four instances, and failed to provide records to a patient upon request.

5. The conduct resulting in the Virginia Order of revocation of Respondent's Virginia medical license would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

a. Education Law §6530(2) (practicing the profession fraudulently);

b. Education Law §6530(3) (negligence on more than one occasion);

c. Education Law §6530(16) (failure to comply);

d. Education Law §6530(17) (undue influence);

e. Education Law §6530(20) (moral unfitness);

f. Education Law §6530(21) (false report);

g. Education Law §6530(22) (failure to make patient records available); and/or

h. Education Law §6530(32) (failure to maintain adequate records).

6. On or about November 18, 2013, in the Isle of Wight Juvenile and Domestic

Relations District Court, Commonwealth of Virginia, Respondent was convicted of assault and battery, a misdemeanor, in violation of Virginia Code 18.2-57.2. Respondent was sentenced, among others, to 4 months incarceration, stayed for two years and conditioned upon good behavior and the payment of $1,000.00 fine and court costs.

VOTE OF THE HEARING COMMITTEE

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..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation would, if committed in New York State, constitute professional misconduct..."

VOTE: Sustained (3-0)

THIRD SPECIFICATION

"Respondent violated Education Law §6530(9)(a)(iii) by having been convicted of an act constituting a crime under the laws of another jurisdiction and which, if committed in this state, would have constituted a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, 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, that jurisdiction had been established over the Respondent and that the hearing could proceed on the merits notwithstanding the Respondent's absence.

The record in this case indicates that the Commonwealth of Virginia summarily suspended Respondent's license to practice medicine in that state, finding that his continued practice of medicine constituted a substantial danger to the public health or safety. The summary action was based upon a Statement of Particulars alleging that Respondent violated applicable standards of care in his care of approximately twenty-seven (27) patients by various conduct.

It is noted that the conduct specified in Virginia documents included, among others, exploiting the patient/physician relationship for personal gain, inappropriate prescribing practices, engaging in an egregious pattern of disruptive behavior or interaction in a health care setting, failure to request or obtain records from previous health care practitioners, failure to make appropriate referrals and/or consult with other practitioners, failure to adequately respond to and/or address drug seeking behavior that indicated abuse or misuse of medications, failure to obtain appropriate diagnostic tests, failure to enforce pain management contracts with patients, failure to perform adequate physical examinations, failure to maintain adequate records and the deliberate alteration of medical records. The panel found that this charge alone would warrant revocation.

In addition, the record goes on to show that on or about July 18, 2014, following a hearing on the charges, the Virginia Board revoked Respondent's license to practice medicine based upon the Virginia Board's findings that, among other things, Respondent conducted his practice in such a manner as to be a danger to the health and welfare of his patients or public on at least eight occasions. Furthermore, Virginia found at least seven instances of intentional or negligent conduct; performed acts likely to deceive, defraud or harm the public on at least eight occasions. In addition, the record shows that the Respondent violated Virginia or federal statutes or rules regulating the manufacture, distribution, dispensing or administration of drugs on at least four occasions; practiced fraudulently or made false statements in the practice of the healing arts; practiced under a false or assumed name; demonstrated conduct contrary to ethical standards; inappropriately prescribed and/or prescribed medications without adequate basis; engaged in inappropriate sexual conduct; exploited the practitioner/patient relationship for personal

gain; failed to maintain adequate patient records in at least four instances, and failed to provide records to a patient upon request.

It is clear from the record that the conduct resulting in the Virginia Order against Respondent would constitute misconduct under the laws of New York State, pursuant to several sections of New York State law set forth above.

The Respondent has not appeared by a New York Attorney for the present matter and the hearing commenced in his absence. The record does not contain any evidence of mitigating circumstances, or remorse. The panel noted that that the Respondent was aware of this proceeding and chose not to appear or be represented by counsel in New York. As to an appropriate penalty, the Hearing Committee considered the full range of penalties available and determined, unanimously, that the people of New York State would be protected by a revocation of the Respondent's license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED.**
2. The license of the Respondent to practice medicine in New York State is hereby revoked.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Delmar, New York

May 8, 2015

Robert A. Catalano, M.D.,M.B.A.

Mehdi A. Khan, D.O.
Gail S. Homick Herrling

To:

Roger Phillips, M.D.

Roger Phillips, M.D.

Jude B. Mulvey, Esq., Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER OF ROGER PHILLIPS, M.D. CO-14-02-1050A	NOTICE OF REFERRAL PROCEEDING

TO: Roger Phillips, M.D. [redacted] Roger Phillips, M.D. [redacted]

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 22nd day of April, 2015, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

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, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, 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 he[redacted]

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
February 9, 2015

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER OF ROGER PHILLIPS, M.D.	STATEMENT OF CHARGES

ROGER PHILLIPS, M.D., the Respondent, was authorized to practice medicine in New York State on November 6, 1987, by the issuance of license number 172928 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 20, 2014, the Virginia Board of Medicine (hereinafter the "Virginia Board") summarily suspended Respondent's license to practice medicine in Virginia, finding that his continued practice of medicine constituted a substantial danger to the public health or safety. The summary action was based upon a Statement of Particulars alleging that Respondent violated applicable standards of care in his care of approximately twenty-seven (27) patients by various conduct including, among others, exploiting the patient/physician relationship for personal gain, inappropriate prescribing practices, engaging in an egregious pattern of disruptive behavior or interaction in a health care setting, failure to request or obtain records from previous health care practitioners, failure to make appropriate referrals and/or consult with other practitioners, failure to adequately respond to and/or address drug seeking behavior that indicated abuse or misuse of medications, failure to obtain appropriate

diagnostic tests, failure to enforce pain management contracts with patients, failure to perform adequate physical examinations, failure to maintain adequate records and the deliberate alteration of medical records.

B. On or about July 18, 2014, following a hearing on the charges, the Virginia Board revoked Respondent's license to practice medicine by Order ("Virginia Order"). The Virginia Order of revocation was based upon the Virginia Board's findings that, among other things, Respondent conducted his practice in such a manner as to be a danger to the health and welfare of his patients or public on at least eight occasions; committed at least seven instances of intentional or negligent conduct; performed acts likely to deceive, defraud or harm the public on at least eight occasions; violated Virginia or federal statutes or rules regulating the manufacture, distribution, dispensing or administration of drugs on at least four occasions; practiced fraudulently or made false statements in the practice of the healing arts; practiced under a false or assumed name; demonstrated conduct contrary to ethical standards; inappropriately prescribed and/or prescribed medications without adequate basis; engaged in inappropriate sexual conduct; exploited the practitioner/patient relationship for personal gain; failed to maintain adequate patient records in at least four instances, and failed to provide records to a patient upon request.

C. The conduct resulting in the Virginia Order of revocation of Respondent's Virginia medical license would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

1. Education Law §6530(2) (practicing the profession fraudulently);
2. Education Law §6530(3) (negligence on more than one occasion);
3. Education Law §6530(16) (failure to comply);
4. Education Law §6530(17) (undue influence);
5. Education Law §6530(20) (moral unfitness);
6. Education Law §6530(21) (false report);
7. Education Law §6530(22) (failure to make patient records available); and/or
8. Education Law §6530(32) (failure to maintain adequate records).

D. On or about November 18, 2013, in the Isle of Wight Juvenile and Domestic Relations District Court, Commonwealth of Virginia, Respondent was convicted of assault and battery, a misdemeanor, in violation of Virginia Code 18.2-57.2. Respondent was sentenced, among others, to 4 months incarceration, stayed for two years and conditioned upon good behavior and the payment of $1,000.00 fine and court costs.

SPECIFICATIONS OF MISCONDUCT

First Specification

Respondent violated State 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, B and C.

Second Specification

Respondent violated New York State Education Law §6530(9)(d) by having his license to practice medicine revoked by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation 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, B and C.

Third Specification

Respondent violated New York State Education Law §6530(9)(a)(iii) by having been convicted of an act constituting a crime under the laws of another jurisdiction and which, if committed in this state, would have constituted a crime under New York state law, in that Petitioner charges:

3. The facts in Paragraph D.

DATE: February 9, 2015
Albany, New York

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct