



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

Public

September 2, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ernest Paul Osei-Tutu, M.D.

Ernest Paul Osei-Tutu, M.D.

REDACTED

REDACTED

Robert Bogan, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Ernest Paul Osei-Tutu, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-158) 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., 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

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER
OF
ERNEST PAUL OSEI-TUTU, M.D.

COPY

DETERMINATION

AND

ORDER

BPMC #10-158

A hearing was held on July 21, 2010, at the offices of the New York State Department of Health, 433 River Street, Troy, New York. A Notice of Referral Proceeding and a Statement of Charges, both dated April 8, 2010, were served upon the Respondent, **Ernest Paul Osei-Tutu, M.D.**, Pursuant to Section 230(10) (e) of the Public Health Law, Chairperson, **John B. Waldman M.D.**, **Eleanor C. Kane M.D.**, and **David Irvine** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Kimberly A. O'Brien 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 in person at the hearing and represented himself. 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 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:	Ernest Paul Osei-Tutu, 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 or transcript page numbers, denoted by the prefix "Ex." or "Tr." 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. Ernest Paul Osei-Tutu, the Respondent, was authorized to practice medicine in New York State on October 29, 1986, by the issuance of license number 168405 by the New York State Education Department (Petitioner's Ex.4).

2. On or about February 25, 2009, the Commonwealth of Massachusetts, Board of Registration (hereinafter "Massachusetts Board"), by a final Decision and Order (hereinafter "Massachusetts Order"), reprimanded Respondent and fined him \$7,500 for negligent treatment of one patient (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent as set forth in the Statement of Charges would constitute professional misconduct under the laws of New York State, had the conduct 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 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 Massachusetts Order states that the Respondent was negligent in his treatment of a single patient (Petitioner's Ex. 5). The Hearing Committee is required to hear and consider only evidence and testimony relating to whether the Massachusetts findings of administrative violations constitute misconduct in New York State and if so the nature and severity of the penalty to be imposed upon the licensee. The Petitioner alleged in the Statement of Charges that the Respondent's actions in Massachusetts, if they occurred in New York State, would have constituted negligence on more than one occasion. The Hearing Committee defines negligence as the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

The Respondent who at the time of the misconduct was the Medical Director for a prison does not deny that he treated the patient who was a prison inmate. The Respondent testified on his own behalf and the Hearing Committee found the Respondent to be introspective and his testimony forthright and credible. The Respondent admits that during his initial visit the patient presented with symptoms of prostatitis and he obtained a thorough history, physical examination, urine specimen, and ordered a PSA test (Tr.9). Subsequently, the patient presented with complaints related to a chronic skin condition. Because the patient was an inmate and many of the subsequent visits were categorized as "acute sick visits," the Respondent did not have the patient's full medical record, and had only fifteen minutes with the patient and focused on the patient's primary complaints (Tr. 9-17).

The Massachusetts Board noted that because the patient was an inmate he was vulnerable, having no choice about who rendered medical care. In making a penalty determination the Massachusetts Board weighed this against the fact that this case involved

only one patient and the treatment environment. The Massachusetts Board reprimanded and fined Respondent and did not restrict the Respondent's license to practice medicine (Ex. 5). The Hearing Committee determined that the penalty imposed on Respondent by the Massachusetts Board is more than sufficient and believes that no further action is necessary.

ORDER

IT IS HEREBY ORDERED THAT:

1. All charges and specifications contained in the Statement of Charges (Appendix 1) are SUSTAINED; and
2. An additional penalty WILL NOT be imposed upon Respondent; and
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: New York,

AUGUST 30, 2010

REDACTED

John B. Waldman, M.D.
Chairperson

Eleanor C. Kane, M.D.
David Irvine

To: Ernest Paul Osei-Tutu

REDACTED

Ernest Paul Osei-Tutu
REDACTED

Robert Bogan, Esq.
Bureau of Professional medical Conduct
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

APPENDIX I



IN THE MATTER
OF
ERNEST PAUL OSEI-TUTU, M.D.
CO-09-03-1674-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ERNEST PAUL OSEI-TUTU, M.D.
REDACTED

ERNEST PAUL OSEI-TUTU, 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 19th day of May, 2010, 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 

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 8, 2010

REDACTED

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
ERNEST PAUL OSEI-TUTU, M.D.
CO-09-03-1674-A

STATEMENT
OF
CHARGES

ERNEST PAUL OSEI-TUTU, M.D., Respondent, was authorized to practice medicine in New York state on October 29, 1986, by the issuance of license number 168405 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 25, 2009, the Commonwealth of Massachusetts, Board of Registration in Medicine (hereinafter "Massachusetts Board"), by a Final Decision and Order (hereinafter "Massachusetts Order"), REPRIMANDED Respondent and FINED him \$7,500.00, based on negligence on repeated occasions.

B. The conduct resulting in the Massachusetts 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 more than one occasion).

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 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: *April 8*, 2010
Albany, New York

REDACTED

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