



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

January 23, 1991

Stephen J. Rodgers, Physician
Box 54
Alloway, N.J. 08001

Re: License No. 107507

Dear Dr. Rodgers:

Enclosed please find Commissioner's Order No. 11006. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

MOIRA A. DORAN
Supervisor

DJK/MAD/mn
Enclosures

CERTIFIED MAIL- RRR

cc: Kern Augustine Conroy & Isele, P.C., Esq.
By Walter Marcus
420 Lakeville Road
Lake Success, N.Y. 11042

RECEIVED

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Office of Professional
Medical Conduct

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

STEPHEN J. RODGERS

CALENDAR NO. 11006



The University of the State of New York

IN THE MATTER
of the
Disciplinary Proceeding
against

STEPHEN J. RODGERS

No. 11006

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

STEPHEN J. RODGERS, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On October 22, 1990, respondent appeared before us in person and was represented by his attorneys Walter Marcus, Esq. and Robert J. Conroy, Esq. Dawn Dwier, Esq., represented the Department of Health.

Petitioner's written recommendation as to the penalty to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be revoked.

Respondent's written recommendation as to the penalty to be imposed, should respondent be found guilty, was no further penalty,

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sanction, or suspension of such penalty or sanction.

We have reviewed the record in this matter including respondent's letter brief; and our unanimous findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed follow:

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. The Matter of an Inquiry into Prescribing Practices of respondent was brought before the New Jersey Board of Medical Examiners.
3. Respondent and his attorney consented to the terms and entry of the Final Order in the Administrative Action before the New Jersey Board of Medical Examiners.
4. By Final Order effective May 1, 1987, in which respondent's admissions relative to his conduct were specified, the New Jersey Board of Medical Examiners: found respondent guilty, pursuant to the New Jersey Statutes Annotated, in that respondent (1) has been grossly negligent in prescribing for a friend and to the "father" of another physician, (2) has engaged in misrepresentation and misconduct in issuing a prescription as well as hospital prescriptions, and (3) has failed to comply with the rules of the New Jersey

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agency; and, as its penalty or disciplinary action, (a) suspended respondent's New Jersey license for 15 months, the first three months of which were an active suspension and the remaining twelve months of which were stayed and were a period of probation, (b) ordered respondent to perform 200 hours of community service, (c) assessed investigative costs of \$4,018.32, (d) required respondent to take and successfully complete a mini-residency in controlled dangerous substances, (e) ordered respondent to appear before a committee, and (f) directed respondent to comply with a certain disciplinary guideline.

5. In the proceeding before the New Jersey Board of Medical Examiners, both respondent and that Board manifested, in the Final Order, an intent to reach the merits regarding respondent's guilt, to resolve the proceeding by finding respondent guilty as shown in the Final Order in that proceeding, and to enter a conclusive and binding determination.
6. Respondent has been found guilty of improper professional practice and professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the findings were based would, if committed in New York State, constitute professional misconduct under Education Law §6509(2) - gross

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negligence, negligence on more than one occasion, and practicing fraudulently.

DETERMINATION AS TO GUILT

The charge contained in the statement of charges, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven, by a preponderance of the evidence, and respondent is guilty thereof.

In this direct referral proceeding, respondent is charged with committing professional misconduct within the meaning of Education Law §6509(5)(b). This charge requires proof that a duly authorized professional disciplinary agency of another state either found respondent guilty of improper professional practice and/or professional misconduct or that there is a specific admission which serves as such finding of guilt, and that the conduct upon which the finding was based would, if committed in New York, constitute professional misconduct under the Education Law. Cases of professional misconduct "based solely upon a violation of subdivision five of section sixty-five hundred nine of the Education Law" may be directly referred to "a Regents Review Committee for its review and report of findings, determinations as to guilt, and recommendations as to the measure of discipline to be imposed." Public Health Law §230(10)(m)(iv).

The elements of the charge specified against respondent are established by this record. The State of New Jersey, Board of

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Medical Examiners (hereafter the New Jersey agency) issued a Final Order expressly finding that respondent committed the improper professional practice and professional misconduct specified in that Order and that particular grounds existed under New Jersey law warranting the suspension of respondent's New Jersey license along with other disciplinary action against respondent. If the conduct upon which the findings in New Jersey were based would have been committed in New York, such conduct would have constituted, under Education Law §6509(2), gross negligence, negligence on more than one occasion, and practicing fraudulently.

Respondent has not contested either that the duly authorized New Jersey agency entered a Final Order consented to by respondent or that if the conduct, upon which the New Jersey agency's findings were based, would have been committed in New York, such conduct would have constituted the misconduct alleged in the statement of charges under the above-mentioned comparable provisions of Education Law §6509(2). Instead, respondent contends that preclusive effect under the doctrine of collateral estoppel cannot be given to the New Jersey agency's Order and that a direct referral may not be maintained against him. We disagree.

Respondent was represented at the time the Final Order was entered in New Jersey. Both respondent and his attorney consented to both the terms of the Order and the entry of it. The matters referred to in the New Jersey Order were of "substantial concern"

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to the New Jersey agency which was of the view that there was evidence of a failure to adequately appreciate the effects of drug abuse on individuals who should rightfully be able to depend on the proper exercise of professional medical discretion in issuance of controlled dangerous substances prescriptions.

The issue here is whether the conduct in question was addressed in the New Jersey proceeding and can be fairly said to have been found by the determination in that proceeding. Petitioner asserts, in essence, that this proceeding was properly brought as a direct referral and that respondent is guilty as charged in this proceeding.

In our unanimous opinion, the New Jersey Final Order resolved the view and concerns of the New Jersey agency and finally determined both the conduct committed by respondent and the violations of New Jersey law by virtue of such conduct. The New Jersey agency, in imposing a penalty or taking disciplinary action against respondent, acted on the basis of the specified and definite conduct it found respondent had committed. The New Jersey agency found, and we recognize that it found, respondent committed gross negligence, misrepresentation and misconduct, and a failure to comply with applicable requirements. The findings regarding respondent's conduct as to his friend, the "father" of another physician, and the particular prescriptions issued are described in the Final Order.

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Respondent understood and accepted the terms of the New Jersey Final Order. His arguments that his conduct was not conclusively resolved in New Jersey are belied by both the findings and conclusions consented to by respondent, as well as by his admissions, such as that he "did not see" his friend "on the occasion of each prescription and, instead, regularly delivered several, post-dated, notwithstanding that he was well aware of his friend's addiction" and that respondent failed "to prepare and maintain a proper patient record." Accordingly, the New Jersey Final Order addressed, reached, and resolved the merits as to respondent's conduct, and determined that said conduct by respondent violated New Jersey law.

The fact that the New Jersey proceeding was determined by a consent order does not mean that conclusive effect may never be given to any Final Order entered by consent. A consent decree may be just as conclusive and binding on the parties as one rendered after a contest. In re DeChairo's Estate, 35 Misc.2d 485 (Surrogate Court, Nassau County 1962). The opposite rule barring according conclusive effect to all consent orders would weaken the effectiveness of a consent order and enable the parties to disregard a final determination previously accepted and entered.

We have considered the question of what was the intent of the New Jersey agency and respondent in entering the Final Order. That Final Order evinces a purpose to bind the parties to the

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determination as to the merits of respondent's conduct. The circumstances as a whole, especially the terms of the consent order, show that the parties, at the time they furnished their consent, intended the issues determined thereby to be established without the need for other proceedings. See Halyalkar v. Board of Regents, 72 N.Y.2d 261 (1988); and In re DeChairo's Estate, *supra*. Respondent having had the full and fair opportunity in New Jersey to contest the evidence against him may not relitigate in another state the issues resolved and determined in New Jersey with the consent of respondent. Accordingly, we are convinced that the Final New Jersey Order should be considered conclusive and binding in this proceeding.

In regard to the foregoing, respondent understood and signed the New Jersey Final Order after consulting his attorney, a former member of the New Jersey agency, and the President of the State Medical Society. We do not accept respondent's claim that his signature was not really his "honest true signature" and that his signature was placed on the document in light of his "naive approach to reality at that time." Respondent's change in approach after he consented to the Final Order and his subsequent dissatisfaction with the Final Order after it was used in other proceedings do not prove that the New Jersey determination was limited to the penalty imposed there.

Furthermore, we note that respondent and his attorney signed

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the Final Order without denying his guilt or qualifying the resolution of his conduct. The findings, conclusions, and admissions in the Final Order were not couched in terms of mere accusations which were not being resolved. The Final Order was not limited to determining only the issue of penalty or restricted in the use of it in other proceedings. The issues disposed of in the Final Order were plainly not left open or for further proceedings. Rather, by consenting in the New Jersey proceeding to reaching the merits regarding his conduct, respondent manifested his guilt as shown in the Final Order in New Jersey. Now that respondent is dissatisfied with the consequences of the Final Order, he may not utilize this proceeding to abrogate or disaffirm his consent. When the doctrine of collateral estoppel is properly invoked, it is not fair to permit a party to relitigate an issue that has already been decided against him.

Respondent contends that collateral estoppel is not here properly invoked since the facts of the instant matter are virtually identical to the facts in Halyalkar v. Board of Regents, 72 N.Y.2d 261 (1988). The New York Court of Appeals in Halyalkar annulled the determination of the Board of Regents invoking the doctrine of collateral estoppel because the issue of Dr. Halyalkar's misconduct could not be said to have been litigated or resolved by the New Jersey agency and, therefore, the necessary identity of issue was not there established. However,

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Halyalkar is distinguishable from the instant matter in several respects.

The consent order in Halyalkar contained no finding that respondent was guilty of misconduct other than the recital of a guilty plea and respondent's agreement to waive a formal hearing. In this matter, the New Jersey State Board of Medical Examiners made specific findings as to respondent's conduct. Second, Dr. Halyalkar did not expressly admit any conduct, but merely entered a guilty plea which, according to the notice received by Dr. Halyalkar, indicated that he did not wish to contest the charges. In this matter, respondent made express admissions as to his conduct and consented to the terms of the Final Order, which terms contained the aforesaid specific findings as well as admissions. Third, Dr. Halyalkar, a native of India and educated and trained as a physician in India, appeared at a hearing before the New Jersey agency without counsel and was unaware he was to be questioned under oath. In this matter, respondent was represented by an attorney who also signed the consent. Fourth, in an administrative proceeding commenced in a third state (Pennsylvania) before the New York proceeding was commenced, Dr. Halyalkar testified to his innocence and the Hearing Examiner found that Dr. Halyalkar was not guilty of the misconduct. In this matter, in an administrative proceeding commenced in a third state (Delaware) before this proceeding was commenced, respondent consented to

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further disciplinary action being imposed against him on the basis of the New Jersey Final Order and, therefore, no testimony or findings as to respondent's innocence resulted.

In our unanimous opinion, the considerations underlying Halyalkar are not present in this matter and, in contrast to Halyalkar, it can fairly be said that, in this matter, the issues regarding respondent's conduct were resolved in the New Jersey proceeding.

Accordingly, in view of the foregoing, based on the conclusive and binding Final Order determined by the New Jersey agency and consented to by respondent, this proceeding against respondent is not inconsistent with Halyalkar or the doctrine of collateral estoppel, and may be maintained as a direct referral proceeding. Choi v. State of New York, 74 N.Y.2d 933 (1989). In accordance with Public Health Law §230(10)(m)(iv), we may, on this record, equate the findings in the prior proceeding with violations of Education Law §6509 and thereby find respondent guilty of this charge.

Here, inasmuch as the elements of the charge under Education Law §6509(5)(b), regarding a prior finding, have been established, the direct referral procedure under Public Health Law §230(10)(m)(iv) expedites this proceeding and conserves resources without relitigating identical issues on which a party has already had a full and fair opportunity to resolve in another forum.

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Respondent has not shown any basis for barring this matter from being handled expeditiously. Thus, respondent's rights are not prejudiced by the use of the direct referral procedure.

We note that respondent has informed us that he now seeks reconsideration from the New Jersey agency. That is the proper forum for respondent to raise his arguments that the prior New Jersey proceeding suffered from a number of "irregularities" and that a "grave misjustice" occurred there. In the absence of any showing that the sister state agency acted without or in excess of its jurisdiction or that any fraud or coercion occurred, we will not consider a collateral attack on the Final Order of the sister state agency. In the event there is any new determination in this matter in New Jersey, respondent may, if he be so advised, pursuant to 8 N.Y.C.R.R. §3.3(f), apply for a reconsideration of any final determination by the Board of Regents in this matter.

**RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED**

Respondent's license to practice as a physician in the State of New York be suspended for two years upon the charge of which respondent was found guilty, that execution of said suspension be stayed, and that respondent be placed on probation for two years under the terms set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "B".

In arriving at our recommendation as to the measure of discipline to be imposed, we have considered the entire record and

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the circumstances herein, including the Final Order of the New Jersey agency was rendered more than three years before this proceeding was commenced, respondent's underlying conduct occurred in 1978 in one case and between January 1979 and April 1985 in another case, the State where the conduct occurred did not revoke respondent's license, respondent has already complied with all sanctions ordered in New Jersey, including performing 200 hours of community service, paying investigative costs of \$4,018.32, and taking and completing a mini-residency in Controlled Dangerous Substances, respondent is in good standing as a physician to practice in New Jersey, Delaware, and Pennsylvania, respondent is practicing in New Jersey as a consultant and assistant to the Director of a Pain Clinic, respondent performed the ordered community service for different veterans organizations in spite of substantial personal injuries, and respondent's service in combat in the military where he was awarded the Humanitarian Service Medal.

Respectfully submitted,

LAURA BRADLEY CHODOS

HERBERT BERNETTE EVANS

SIMON J. LIEBOWITZ



Chairperson

Dated: December 7, 1990

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

-----X

IN THE MATTER : STATEMENT
OF : OF
STEPHEN J. RODGERS, M.D. : CHARGES

-----X

STEPHEN J. RODGERS, M.D., the Respondent, was authorized to practice medicine in New York State on November 2, 1970 by the issuance of license number 107507 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in the State of of New York. Respondent was last registered from Box 54 Alloway, New Jersey, 08001.

SPECIFICATION

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law Section 6509(5)(b) (McKinney 1985) 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:

EXHIBIT 1

By Final Order of the New Jersey Department of Law and Public Safety Division of Consumer Affairs, Board of Medical Examiners (the Board) dated May 1, 1978, Respondent's license was suspended for 15 months, the last 12 months of which were stayed and to be a period of probation. He was ordered to perform 200 hours of community service and was assessed investigative costs of \$4,018.32. Respondent was further required to take and successfully a complete mini-residency in controlled dangerous substances.

The penalties were based upon the Board's conclusion that Respondent was grossly negligent in prescribing for substances including, percodan, percocet, tylox and demeral for two patients. The penalties were also based on Respondent's misrepresentation and misconduct in issuing a prescription for a person he had never seen as well as for issuance of hospital prescription for a person who was not a patient at the hospital. The penalties were also based on Respondent's failure to comply with the requirements of rules of the Board.

Respondent's acts, as found by the New Jersey Board, would constitute professional misconduct in New York State as defined in N.Y. Educ. Law Sec. 6509(2) (McKinney 1985) (Practicing medicine with gross negligence); (Practicing medicine with negligence on more than one occasion) and (Practicing the profession fraudulently).

DATED: New York, New York

September 12, 1990

A handwritten signature in black ink, appearing to read "Chris Stern Hyman", written over a horizontal line.

CHRIS STERN HYMAN
Counsel

Bureau of Professional Medical
Conduct

EXHIBIT "B"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

STEPHEN J. RODGERS

CALENDAR NO. 11006

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:
 - a. That respondent, during the period of probation, shall act in all ways in a manner befitting respondent's professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by respondent's profession;
 - b. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
 - c. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and
 - d. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of

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Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

**ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK**

STEPHEN J. RODGERS

CALENDAR NO. 11006



The University of the State of New York

IN THE MATTER

OF

STEPHEN J. RODGERS
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 11006

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 11006, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (December 21, 1990): That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of STEPHEN J. RODGERS, respondent, be accepted; that respondent is guilty of the charge by a preponderance of the evidence; that respondent's license and registration to practice as a physician in the State of New York be suspended for two years upon the charge of which respondent was found guilty; that execution of said suspension be stayed; that respondent be placed on probation for two years under the terms prescribed by the Regents Review Committee; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

STEPHEN J. RODGERS (11006)

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 7th day of

January, 1991.
Thomas Sobol
Commissioner of Education