



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 5, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nora Brayshaw, M.D.
151 Stanford
Sausalito, CA 94966

David Brayshaw
PO Box 1951
Sausalito, CA 94966

Bradley C. Mohr
NYS Department of Health
Bureau of Professional Medical Conduct
ESP Corning Tower - Room 2509
Albany, NY 12237

RE: In the Matter of Nora Brayshaw, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-232) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

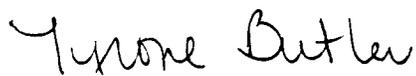
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

A handwritten signature in cursive script that reads "Tyrone Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

IN THE MATTER

-OF-

NORA BRAYSHAW, M.D.

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE
BPMC ORDER
NO. 98 -232

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated April 14, 1998 which were served upon NORA BRAYSHAW, M.D., (hereinafter referred to as "Respondent"). ELEANOR KANE, M.D., Chairperson, HONG CHUL YOON, M.D., and MICHAEL WALKER, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as the Administrative Officer. A hearing was held on May 20, 1998 at Hedley Park Place, Troy, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner" or "the Board") appeared by HENRY M. GREENBERG, ESQ., General Counsel, by BRADLEY C. MOHR, ESQ., Senior Attorney, Bureau of Professional Medical Conduct. Respondent did not appear in person. However, written materials were submitted by Respondent's counsel, DAVID D. BRAYSHAW, ESQ. These documents, containing legal arguments, motions and a summation were received by the Administrative Law Judge and distributed to the Committee, as warranted. Petitioner was given the opportunity to review Respondent's submissions and reply to them¹. Other evidence was received. A transcript of these proceedings was made.

¹All documents submitted by the parties are to be considered part of the record herein whether received as evidence or not. All were considered by either the Administrative Law Judge or the trier of fact, as appropriate.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530 (9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(b) and (d) (having been found guilty of professional misconduct in another jurisdiction and having had disciplinary action taken against the license of Respondent in another jurisdiction). The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

SIGNIFICANT LEGAL DECISIONS

Respondent argues that there was neither personal service, nor a diligent effort to obtain same. Respondent also argues that the service by certified mail to several of the addresses given by Respondent to authorities in this state and others, was inadequate. The fact is that Respondent has established actual notice based upon participation by her attorney. In addition, the Administrative Law Judge has found that the efforts at personal service by the State were diligent. Respondent also argues that the amount of time between receipt of the certified mail and the date of the hearing deprived her of any reasonable opportunity for a meaningful defense. There is no record of a request by Respondent for additional time to develop a defense or arrange to travel to New York. It is the practice of this Administrative Law Judge to grant such requests when made in a timely manner. In the alternative, Respondent's are given leave to submit affidavits in lieu of testimony. Respondent was given leave to participate in writing and did so. Respondent's argument that she was deprived of notice and a reasonable opportunity to be heard are therefore inconsistent with the facts in this matter.

With regard to the charges themselves, Respondent asserts that the proceedings upon which the charges herein are based, are not concluded in the home state. It has long been settled that a direct referral proceeding before the Board is not barred by any ongoing appellate process in the jurisdiction wherein the conduct arose (see, *Matter of Ricci v. Chasin*, 220 A.D.2d 898; 632 N.Y.S 2d 303; 1995 N.Y. App. Div.).

Furthermore, Respondent argues that the findings made by New Jersey and California do not support findings of misconduct in this state. To the contrary, as a matter of law, the findings produced by Petitioner clearly qualify as bases for the specifications herein. As will be seen below, the trier of fact also found that as a matter of fact, the findings by the other states constitute the specifications as charged.

FINDINGS OF FACT

The Committee adopts the factual statements set forth on pages one through three of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS SPECIFICATIONS AND PENALTY

Petitioner herein has proven by a preponderance of the evidence that Respondent was appropriately served with notice of this proceeding. Respondent has indicated that she had actual knowledge of this proceeding. The Administrative Law Judge ruled that Petitioner had established jurisdiction.

Petitioner has proven by a preponderance of the evidence that Respondent was found guilty of professional misconduct in New Jersey. Respondent was actually suspended from practice for a period of two and one half years. She was also directed to pay \$75, 127.49 as the costs of the investigation in New Jersey. Respondent has not, as of the date of this hearing, met her obligations in New Jersey. The basis of the New Jersey action would, if committed in New York, constitute gross negligence, gross incompetence, negligence or incompetence on more than one occasion and moral misconduct.

Petitioner has also established by a preponderance of the evidence that California revoked the medical license of Respondent and imposed a financial penalty of \$44, 942. The bases of the California action would, if committed in New York, constitute gross negligence, negligence on more than one occasion, having been disciplined by another state, and ordering excessive tests. Therefore, the Factual Allegations

and Specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

Respondent has been found guilty of gross negligence and gross incompetence as well as other serious infractions in two states. She has not fulfilled her obligations to either state. One state gave her two and one half years of actual suspension. The second state revoked her license. The facts upon which the infractions were based involve substandard medical treatment to a significant number of patients. The number of patients involved gives this panel a meaningful sample of her care and can better form the basis for assigning a sanction. Based upon all the above, it is the unanimous conclusion of this panel that this physician presents a potential danger to the people of any state in which she is allowed to practice. Such a significant level of threat to the people of this state cannot be tolerated. The only appropriate sanction is revocation.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

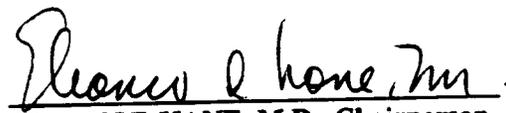
3. The license of Respondent to practice medicine in the state of New York is hereby **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

4. This order shall take effect **UPON RECEIPT** by Respondent or her attorney or **SEVEN (7) DAYS** after mailing of this order by Certified Mail to Respondent or her attorney.

Dated:
Rhinebeck, New York

9/24/98 1998


ELEANOR KANE, M.D., Chairperson,

**HONG CHUL YOON, M.D.,
MICHAEL WALKER,**

TO:

BRADLEY C. MOHR ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower
Albany, N.Y. 12237

NORA BRAYSHAW, M.D.
P.O. Box 4007
Menlo Park , CA 94026

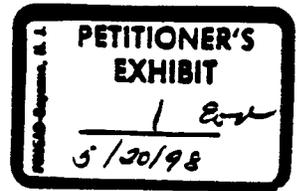
NORA BRAYSHAW, M.D.
40 Sterling Rd.
Wachtung, NJ 07060

DAVID BRAYSHAW, ESQ.
P.O. Box 1951
Sausalito, CA 94966

NORA BRAYSHAW, M.D.
151 Stanford
Sausalito, CA 94966

NORA BRAYSHAW, M.D.
P.O. Box 620551
Woodside , CA 94062

APPENDIX ONE



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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
NORA BRAYSHAW, M.D. : PROCEEDING

-----X

TO: NORA BRAYSHAW, M.D.
P.O. Box 620551
Woodside, CA 94062
P.O. 4007
Menlo Park, CA 94026

151 Stanford
Sausalito, CA 94966

P.O. Box 1951
Sausalito, CA 94966

40 Stirling Rd.
Wachtung, NJ 07060

STATE OF NEW YORK
DEPARTMENT OF HEALTH
DEPT. ✓ RESPT EXHIBIT... 1.....
ID ✓ EVD
DATE.....INITIALS.....

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 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 20th day of May, 1998 at 10:00 in the forenoon of that day at Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 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, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 10, 1998.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to 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 an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before

May 10, 1998 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below.

Pursuant to Section 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.

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
April 23, 1998


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

Inquiries should be addressed to:

BRADLEY MOHR
Senior Attorney
NYS Department of Health
Division of Legal Affairs
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
NORA BRAYSHAW, M.D. : CHARGES

-----X

NORA BRAYSHAW, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 13, 1981 by the issuance of license number 145119 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. Respondent was disciplined by the State of New Jersey Department of Law & Public Safety Division of Consumer Affairs Board of Medical by Final Decision and Order filed February 20, 1990. Respondent was found to have violated N.J.S.A. §45:1-21(b) (c) (d) (e) and §45:1-10 on numerous occasions. The Board found that Respondent, among other things, inappropriately prescribed and treated 26 patients with Synthroid. Respondent's license to practice medicine and surgery in the State of New Jersey was suspended for five years which includes: two and one half years of active suspension and two and one half years stayed with probation which included practice supervision and restriction of practice to an institutional setting. In addition, Respondent

was ordered to pay the sum of \$75,127.49 representing the costs of the investigation. After period of suspension, Respondent must submit a proposal for re-entry for Board approval, before re-entering the practice of medicine in New Jersey. Respondent has not paid the penalty nor fulfilled the requirements for re-entry into practice in New Jersey.

2. The conduct of which Respondent was found guilty in New Jersey would, if committed in New York State, constitute professional misconduct under the laws of New York State, within the meaning of New York Education Law namely: §6530(4) (gross negligence); §6530(6) (gross incompetence); §6530(3) (negligence on more than one occasion); §6530(5) (incompetence on more than one occasion) and §6530(20) (moral unfitness).

3. By Decision dated December 17, 1996, effective January 16, 1997, Respondent was disciplined by the Medical Board of California in Case No. 03-93-314449/OAH No. N-9503165. Respondent was found to have violated California Business and Professions Code §725; §2234(b)(c); and §2305. Respondent's medical license was revoked. In addition, Respondent was ordered to pay costs to the Medical Board of \$44,942.

4. The conduct of which Respondent was found guilty of involved finding that Respondent had repeatedly and excessively treated 2 patients in California by prescribing Synthroid to them in a manner that was both grossly and repeatedly negligent. In addition, Respondent was found guilty of having been disciplined

in another jurisdiction (New Jersey).

5. The conduct of which Respondent was found guilty in California would, if committed in New York State, constitute professional misconduct under the laws of New York State, within the meaning of New York Education Law namely: §6530(4) (gross negligence); §6530(3) (negligence on more than one occasion); §6530(9) (d) (having been disciplined in another state); and §6530(35) (ordering excessive treatments not warranted by the condition of the patient).

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

MISCONDUCT IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9) (b) in that she was 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 of paragraphs 1 and/or 2.
2. The facts of paragraphs 3, 4 and/or 5

THIRD AND FOURTH SPECIFICATIONS
DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d) in that she had disciplinary action taken against her license 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:

3. The facts of paragraphs 1 and/or 2.
4. The facts of paragraphs 3, 4 and/or 5.

DATED: April 23, 1998
Albany, New York


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