



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 2, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Lee A. Davis, Esq.
NYS Department of Health
ESP – Corning Tower – 25th Floor
Albany, New York 12237

Robert S. Howell, Jr. M.D.
1015 Wilkinson Boulevard
P.O. Box 5203
Frankfort, Kentucky 40601

RE: In the Matter of Robert S. Howell, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-297) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER

OF

ROBERT S. HOWELL, JR., M.D.

DETERMINATION

AND

ORDER

BPMC #00-297

ALBERT ELLMAN, M.D., Chairperson, **MARGERY W. SMITH, M.D.** and **NANCY J. MACINTYRE, R.N. Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10(e)) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, served as Administrative Officer for the Hearing Committee. The Department of Health appeared by **HENRY M. GREENBERG**, General Counsel, **LEE A. DAVIS, ESQ.**, Assistant Counsel, of Counsel. The Respondent did not appear and was not represented by counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

STATEMENT OF CHARGES

The accompanying Statement of Charges alleged one (1) specification of professional misconduct, i.e., failing to respond to written communications from the New York State Department of Health. The charge is more specifically set forth in the Statement of Charges dated

August 10, 2000, a copy of which is attached hereto as Appendix I and made a part of this Determination and Order.

WITNESSES

For the Petitioner:	None
For the Respondent:	None

FINDINGS OF FACT

1. Respondent was authorized to practice medicine in New York State by the issuance of license number 173399 on January 7, 1988, by the New York State Education Department (Exh. 3). Respondent is not currently registered with the New York State Education Department.
2. On or about July 26, 1998, the New York State Board of Professional Medical Conduct (Board) issued BPMC Order # 98-159, which suspended Respondent's New York State medical license until such time as Respondent was able to demonstrate that he was not incapacitated for the active practice of medicine. (Exh. 10)
3. On or about September 2, 1998 through April 5, 1999, the Physician Monitoring Program (PMP) of the Office of Professional Medical Conduct (OPMC) sent four (4) letters to Respondent notifying him that his compliance with the Board's Order would be monitored by the PMP, and directing him to complete and return a Data Sheet and Practice Restriction Compliance Declaration to PMP within fifteen (15) days. To date, Respondent has not responded to any of these requests. (Exhs. 4-7)

4. On or about April 27, 2000, Respondent was sent a letter from Lee A. Davis, Esq., Assistant Counsel, New York State Department of Health, Division of Legal Affairs, Bureau of Professional Medical Conduct, notifying him that pursuant to an investigation being conducted by OPMC into his failure to comply with the monitoring of his practice, pursuant to BPMC Order # 98-159, he was directed to provide the information previously requested by OPMC within 30 days. To date, Respondent has not responded to any of these requests. (Exh. 8)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the following Factual Allegations should be sustained. The citations in parenthesis refer to the Findings of Fact which support each Factual Allegation:

- | | |
|----------------|-----|
| Paragraph A: | (2) |
| Paragraph A.1: | (3) |
| Paragraph A.2: | (4) |

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise. The Hearing Committee concluded that the one (1) Specification of Professional Misconduct should be sustained.

**FAILURE TO RESPOND TO WRITTEN COMMUNICATIONS FROM THE NYS
DEPARTMENT OF HEALTH IN VIOLATION OF § 6530(28) OF THE NY EDUCATION
LAW**

SUSTAINED

DISCUSSION

FIRST SPECIFICATION

The First Specification alleges that Respondent failed to respond to written communications from the New York State Department of Health in violation of §6532(28) of the New York Education Law. The Hearing Committee finds that Respondent has clearly demonstrated that he has no intention to comply with the terms of the conditional suspension of his license as set forth in BPMC Order 98-159. These terms require Respondent to show to the satisfaction of the Board "that he is not incapacitated for the active practice of medicine." (Exh. 10) The Hearing Committee finds that the Board has made numerous good faith efforts to contact Respondent and that he has routinely failed to reply. As a result, the Hearing Committee sustains the First Specification.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee believes that Respondent continues to suffer from the serious

mental impairments that were found by the Kentucky State Board of Medical Licensure. (Exh. 10) As a result, Respondent creates an imminent danger to patients and he cannot remain licensed to practice medicine in New York State. Therefore, under the totality of the circumstances, the Hearing Committee finds that revocation of Respondent's New York license is the appropriate penalty in this instance.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First Specification of Professional Misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State is **REVOKED**.
3. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Loudonville, New York
11/11 2000



ALBERT ELLMAN, M.D.
(Chairperson)

MARGERY W. SMITH, M.D.
NANCY J. MACINTYRE, Ph.D.

TO: Lee A. Davis, Esq.
NYS Department of Health
Corning Tower- 25th Fl.
Empire State Plaza
Albany, New York 12237

Robert S. Howell Jr., M.D.
1015 Wilkinson Blvd.
P.O. Box 5203
Frankfort, KY 40601

APPENDIX I

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ROBERT S. HOWELL, JR., M.D. : CHARGES

-----X

ROBERT S. HOWELL, JR., M.D., the Respondent, was authorized to practice medicine in New York State on January 7, 1988 by the issuance of license number 173399 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about July 26, 1998, the New York State Board of Professional Medical Conduct (Board) issued BPMC Order # 98-159, which suspended Respondent's New York State medical license until such time as Respondent was able to demonstrate that he was not incapacitated for the active practice of medicine.
1. On or about September 2, 1998 through April 5, 1999, the Physician Monitoring Program (PMP) of the Office of Professional Medical Conduct (OPMC) sent ~~five~~ ^{four} (4) letters to Respondent notifying him that his compliance with the Board's Order would be monitored

by the PMP, and directing him to complete and return a Data Sheet and Practice Restriction Compliance Declaration to PMP within fifteen (15) days. To date, Respondent has not responded to any of these requests.

2. On or about April 27, 2000, Respondent was sent a letter from Lee A. Davis, Esq., Assistant Counsel, New York State Department of Health, Division of Legal Affairs, Bureau of Professional Medical Conduct, notifying him that pursuant to an investigation being conducted by OPMC into his failure to comply with the monitoring of his practice, pursuant to BMC Order #98-159, he was directed to provide the information previously requested by OPMC within 30 days. To date, Respondent has not responded to any of these requests.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law §6530(28) by failing to respond to written communications from the New York State Department of Health in that Petitioner charges:

1. The facts in paragraphs A. and A.1. And A.2.

DATED: August 10, 2000
Albany, New York


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