



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

August 6, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Terrence Sheehan, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Robert S. Asher, Esq.
295 Madison Avenue
New York, New York 10017

Fredric Cogan, M.D.
24 Rockaway Avenue
Garden City, New York 11530

RE: In the Matter of Fredric Cogan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-163) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

**IN THE MATTER
OF
FREDRIC COGAN, M.D.**

**DETERMINATION
AND
ORDER
BPMC-98-163**

A Notice of Hearing and Statement of Charges, were served upon the Respondent, **FREDRIC COGAN, M.D.** The Statement of Charges were amended at a pre-hearing conference on June 24, 1998. **ADEL R. ABADIR, M.D., (Chair), ROBERT BRUCE BERGMANN, M.D.** and **CAROL LYNN HARRISON, Ph.D,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.,** Administrative Law Judge, served as the Administrative Officer. A hearing was held on June 24, 1998. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL,** by **TERRENCE SHEEHAN, ESQ,** Associate Counsel of Counsel. The Respondent appeared and was represented by **ROBERT S. ASHER, ESQ.** Evidence was received and witnesses sworn and heard 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 where 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 or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9) (a) (ii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Respondent was authorized to practice medicine in New York State on or about March 2, 1979, by the issuance of license number 137406 by the New York State Education Department. (Pet. Ex. #2)

- 2 On or about January 13, 1989, Respondent pled guilty in the United States District Court for the Southern District of New York to the federal crime of failing to pay the excise taxes due on the sale of two pen guns in calendar years 1984 and 1985. A pen gun is a 22 caliber gun in the shape of a pen. (Pet. Ex 1)
3. The District Court placed Respondent on two years probation and fined him. \$350. (Pet. Ex. 1)

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 unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was convicted of a federal offense. Section 6530(9)(ii) defines professional misconduct as being convicted of committing an act constituting a crime under federal law. As a result, the Hearing Committee voted to sustain the Specification of professional misconduct contained within the Statement of Charges.

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 should be censured and reprimanded. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee finds that there was no proof that Respondent is involved in any type of illicit gun business. They note that Respondent has already served a 2 year federal probation and he appears to have a clean record since this 1984 incident. The Hearing Committee finds that Respondent was straightforward in his testimony. He also presented 2 credible character witnesses on his behalf. (T. 21, 34) They further note that this misconduct occurred 14 years ago and involves no patient harm. The Hearing Committee believes that Respondent provides a valuable service in the community in which he serves. (Resp. A, B, C ; T. 22-23, 36- 37, 39, 50-51)

The Hearing Committee concludes that Respondent's misconduct does not warrant a serious penalty. Therefore, under the circumstances, censure and reprimand is the appropriate sanction in this instance.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #2) is **SUSTAINED.**
2. Respondent is hereby **CENSURED AND REPRIMANDED.**
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: Brooklyn, New York
8/4, 1998


ADEL R. ABADIR, M.D. (Chair)

ROBERT BRUCE BERGMANN., M.D.
CAROL LYNN HARRISON, Ph.D

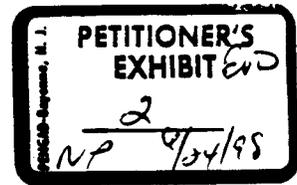
TO: Terrence Sheehan, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
5 Penn Plaza
New York, New York 10001

Robert S. Asher, Esq.
295 Madison Avenue
New York, NY 10017

Fredric Cogan, M.D.
24 Rockaway Ave.
Garden City, NY 11530

APPENDIX I

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



IN THE MATTER
OF
FREDRIC COGAN, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: FREDRIC COGAN, M.D.
24 Rockaway Avenue
Garden City, NY 11530

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1998) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on July 8, 1997, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, 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 twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1998) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the 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 or other evidence which cannot be

photocopied.

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: New York, New York
June, 1998

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Terrence Sheehan
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
FREDRIC COGAN, M.D.

STATEMENT
OF
CHARGES

FREDRIC COGAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 2, 1979, by the issuance of license number 137406 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about January 13, 1989, Respondent pled guilty in United States District Court for the Southern District of New York to the federal crime of failing to pay the excise taxes due on the sale of two pen guns in calendar years 1984 and 1985. A pen gun is a 22 caliber gun in the shape of a pen.

The District Court placed Respondent on two years probation and fined him \$350.

SPECIFICATION OF CHARGES

SPECIFICATION

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraph A.

DATED: June 1998
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct