



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

*Public*

Dennis P. Whalen  
Executive Deputy Commissioner

December 27, 2006

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

William Arthur Birge, D.O.  
195 Piette Road  
Newport, Vermont 05855

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street, Suite 303  
Troy, New York 12180

**RE: In the Matter of William Arthur Birge, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 06-308) 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 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.

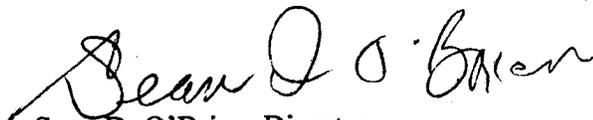
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:djh

Enclosure

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

COPY

IN THE MATTER

DETERMINATION

OF

AND

WILLIAM ARTHUR BIRGE, D.O.

ORDER

BPMC No. 06-308

A hearing was held on December 20, 2006, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated October 25, 2006, were served upon the Respondent, **William Arthur Birge, D.O.** Pursuant to Section 230(10)(e) of the Public Health Law, **Donald Cherr, M.D.**, Chairperson, **Alexander M. Yvars, M.D.**, and **William W. Walence, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing, either in person or by counsel.

Evidence was received and transcripts of these proceedings were made.

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

**BACKGROUND**

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)(a)(iii), 6530(9)(b) and 6530(9)(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: None

#### 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, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Hearing Committee findings were unanimous.

1. William Arthur Birge, D.O., the Respondent, was authorized to practice medicine in New York State on May 24, 1985, by the issuance of license number 162254 by the New York State Education Department (Petitioner's Ex. 4).

2. On September 6, 2005, in Vermont District Court, Caledonia Circuit, the Respondent was found guilty, based on a plea of nolo contendere, of seven counts of obtaining drugs by misrepresentation, in violation of V.S.A. 4234(a)(1), misdemeanors, and was placed on probation and deferred sentencing for three years (Petitioner's Ex. 5).

3. On March 14, 2006, the Vermont Office of Professional Regulation, Board of Osteopathic Physicians and Surgeons ("Vermont Board"), by a Stipulation and Consent Order ("Vermont Order"), required the Respondent to come into good standing with the Vermont Department of Taxes and the Vermont Office of Child Support, and placed conditions on his license to practice medicine for three years. Those conditions included submitting to a psychiatric evaluation, having his practice supervised by another physician, taking nine hours of courses in record keeping, participating in a substance abuse recovery program, and not writing prescriptions for himself, family members or any non-patient. This action was taken based on findings that the Respondent, between April 9, 2004, and May 18, 2004, had written three prescriptions for an employee, for Concerta, and instructed the employee to turn the medication over to him for his personal use; that the Respondent, between October 7, 2004, and December 8, 2004, had written four prescriptions for the son of another employee, for Methylphenidate, and instructed the employee to turn the medication over to him for his personal use; that the Respondent had made false statements on his license renewal application; and that the Respondent did not keep adequate medical records. (Petitioner's Ex. 6).

#### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(2) - "Practicing the profession fraudulently or beyond its authorized scope;"
- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;"

- New York Education Law Section 6530(21) - "Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so;" and

- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years..."

### VOTE OF THE HEARING COMMITTEE

#### FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the laws of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law..."

VOTE: Sustained (3-0)

#### SECOND 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)

#### THIRD 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 Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge ruled that an Affidavit of Service (Petitioner's Ex. 2) proved that the Notice of Referral Proceeding and the Statement of Charges had been personally served on the Respondent, and that, therefore, jurisdiction had been established over the Respondent and the hearing could proceed on the merits despite the Respondent's absence.

The Respondent was convicted of seven counts of Obtaining a Drug by Misrepresentation. The drug was Methylphenidate, which is a Schedule II controlled substance sold under the brand names Concerta and Ritalin. The Respondent wrote prescriptions in the names of other people with the understanding that those people, once the prescriptions were filled, would give the drugs to the Respondent for his own personal use.

In the Vermont Order, the Vermont Board found that the Methylphenidate scheme constituted professional misconduct. The Vermont Order also held that the Respondent committed professional misconduct by stating falsely on his Vermont license renewal application that he was in good standing on his child support obligations and his tax obligations. The Vermont Board also found that the Respondent committed professional misconduct by failing to maintain adequate medical records.

The repeated obtaining of a controlled substance by dishonest means, the failure to meet child support obligations, the failure to meet tax obligations and the failure to answer truthfully on the Vermont application about the child support and tax problems raise a

serious concern about whether the Respondent is trustworthy enough to practice medicine in New York State. Because the Respondent did not appear at the hearing, there is no evidence in his favor addressing this concern. There is no evidence of mitigating circumstances, rehabilitation or remorse. The Petitioner recommended that the Respondent's license to practice medicine be revoked. Given the absence of evidence in the hearing record supporting the proposition that the Respondent can be trusted to practice medicine in accordance with the profession's legal requirements, the Petitioner's recommendation will be adopted.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

**DATED: Rochester, New York**

26 December, 2006

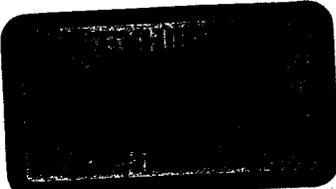


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**Donald Cherr, M.D.**  
**Chairperson**

**Alexander M. Yvars, M.D.**  
**William W. Walence, Ph.D.**

# APPENDIX 1

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



IN THE MATTER

OF

WILLIAM ARTHUR BIRGE, D.O.  
CO-06-05-3220-A

NOTICE OF  
REFERRAL  
PROCEEDING

ORIGINAL

TO: WILLIAM ARTHUR BIRGE, D.O.  
195 Piette Road  
Newport, VT 05855

**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 20<sup>th</sup> day of December, 2006, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, 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 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 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 New York State Administrative Procedure Act §401 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: Albany, New York

*October 25, 2006*

  
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  
WILLIAM ARTHUR BIRGE, D.O.  
CO-06-05-3220-A

STATEMENT  
OF  
CHARGES

WILLIAM ARTHUR BIRGE, D.O., Respondent, was authorized to practice medicine in New York state on May 24, 1985, by the issuance of license number 162254 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about September 6, 2005, in the Vermont District Court, Unit 3, Caledonia Circuit, Respondent was found guilty, based on a plea of nolo contendere, of seven (7) counts of obtaining drugs by misrepresentation, in violation of V.S.A. 4234(a)(1), misdemeanors, and placed Respondent on probation and deferred sentencing for three (3) years.

B. On or about March 14, 2006, the State of Vermont, Secretary of State, Office of Professional Regulation, Board of Osteopathic Physicians and Surgeons (hereinafter "Vermont Board"), by a Stipulation and Consent Order, (hereinafter "Vermont Order"), required Respondent to come into good standing with the Vermont Department of Taxes and the Vermont Office of Child Support within six (6) months or his license to practice medicine will be suspended indefinitely, and placed conditions on his license to practice medicine for three (3) years, that include, inter alia, that he submit to a detailed psychiatric evaluation, that his practice of medicine be supervised by another physician, that he take a minimum of nine (9) hours of course work in record keeping, that he participate in a substance abuse recovery group, and that he not write prescriptions for himself, family members, relatives or any non-patient, based on between April 9, 2004 and May 18, 2004, writing three (3) separate prescriptions for an employee, for Concerta, with the instruction that once the prescriptions were filled, the drugs be turned over to Respondent for his own personal use; between October 7, 2004, and December 8, 2004, writing four (4) separate prescriptions for the son of an employee, for Methylphenidate, with the instruction that once the prescriptions were filled, the drugs be turned over to the Respondent, for his own personal use; making a false statement on his license renewal application; and difficulty in maintaining the full spectrum of patient records.

C. The conduct resulting in the Vermont Board's 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(20) (moral unfitness);
3. New York Education Law §6530(21) (willfully making or filing a false report required by law or the department of health or the education department); and/or
4. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient provided).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

**SECOND 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:

2. The facts in Paragraphs B and/or C.

**THIRD SPECIFICATION**

Respondent violated New York 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 New York state, in that Petitioner charges:

3. The facts in Paragraphs B.and/or C.

DATED: *Oct. 25*, 2006  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct