



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

October 25, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin C. Roe, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2429
Empire State Plaza
Albany, New York 12237-0032

Neal Stephen Simon, Esq.
460 West 34th Street - 12th Floor
New York, New York 10001

RECEIVED

OCT 26 1994

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Boris Barry Benson, M.D.
75 Hopper Farm Road
Upper Saddle River, New Jersey 07458

RE: In the Matter of Boris Barry Benson, M.D.

Dear Mr. Roe, Mr. Simon and Dr. Benson:

Enclosed please find the Determination and Order (No. BPMC-94-224) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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), "(t)he

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 all action 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.

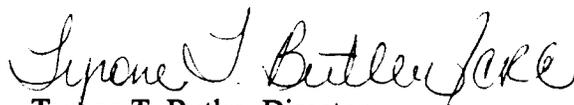
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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,


Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc

Enclosure

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

**IN THE MATTER
OF
BORIS BARRY BENSON, M.D.**

**DETERMINATION
AND
ORDER**

ORDER NO. BPMC - 94 - 224

ALBERT L. BARTOLETTI, M.D., (Chair), **HOWARD SOHNEN, M.D.** and **IRVING CAPLAN** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) and §230(19) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., **ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer.

The Department of Health appeared by **KEVIN C. ROE, ESQ.**, Associate Counsel.

Respondent, **BORIS BARRY BENSON, M.D.**, (formerly known as **BORIS VENIAMINOVICH MIRIANASHVILI**) appeared personally and was represented by **NEAL STEPHEN SIMON, ESQ.**

Evidence was received, witnesses were sworn or affirmed and examined. Transcripts of the proceedings were made. After consideration of the record, the Hearing Committee issues this Determination and Order pursuant to the Public Health Law and the Education Law of the State of New York.

PROCEDURAL HISTORY

Date of Initiation of Violation Proceeding:	March 2, 1994
Date of Service of Notice of Violation:	March 2, 1994
Date of Request for a Hearing:	March 15, 1994
Pre-Hearing Conference:	Not Held
Hearing Held:	June 10, 1994 September 9, 1994
Witnesses called by the Petitioner, Department of Health:	None
Witnesses called by the Respondent, Boris Barry Benson, M.D.:	Guiorgui Tchkadoua Boris Barry Benson, M.D.

STATEMENT OF CASE

This case was brought pursuant to §230(19) of the Public Health Law of the State of New York (hereinafter P.H.L.). Respondent, BORIS BARRY BENSON, M.D., (hereinafter "Respondent") is charged with professional misconduct by reason of violating a term or condition of probation previously imposed on him¹

Respondent entered into a Consent Order with the New York State Department of Health (hereinafter "Petitioner"). The New York State Board for Professional Medical Conduct (hereinafter "NYS Board") accepted the terms of said Consent Order.

¹ Education Law §6530(19) and Petitioner's Exhibit # 1.

Respondent was placed on probation, in New York, which required that he comply with various terms and conditions. Petitioner alleges that In 1993, Respondent violated the terms of an Order, previously issued by the New Jersey State Board of Medical Examiners. (hereinafter "NJ Board") Petitioner alleges that said New Jersey violation is a violation of the terms and conditions of the New York probation.

Respondent disputes the findings of the New Jersey proceedings and appealed same. Therefore, Respondent disputes that he violated the terms of his New York probation.

A copy of the Notice of Violation of Probation letter is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence or testimony, if any, was considered and rejected in favor of the cited evidence. Unless otherwise noted, all Findings and Conclusions herein were unanimous.

1. Respondent was authorized to practice medicine in New York State on February 27, 1984, by the issuance of license number 157401 by the New York State Education Department. (Petitioner's Exhibit # 3)²

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Boris Barry Benson, M.D. (Respondent's Exhibit).

2. The Respondent is currently registered with the New York State Education Department to practice medicine in the State of New York. [T-39-40; T-88]³

3. On April 16, 1992, Respondent signed an application for a Consent Order ("NYS Consent Order") with the NYS Board admitting that the State of New Jersey had suspended his license to practice medicine for three years. (Petitioner's Exhibit #3)

4. The April 16, 1992 NYS Consent Order incorporated the charges of professional misconduct brought by the NYS Board which charges included the following:

a. On July 26, 1989, Respondent's license to practice medicine in New Jersey was limited based on a finding of diversion and improper utilization of drugs⁴ by Respondent.

b. Respondent was required to submit to random urine testing and monitoring of his utilization of Controlled Dangerous Substances (hereinafter "CDS") in his office practice.

c. On June 7, 1990, Respondent's license was additionally restricted, by the NJ Board, based on findings of a positive urine sample⁵ and lack of cooperation from Respondent.

d. On March 18, 1991, Respondent's license to practice medicine in New Jersey was suspended based on findings of another positive urine sample and lack of compliance by Respondent to prior New Jersey Orders of the NJ Board.

³ Numbers in brackets refer to transcript page numbers. [T-]

⁴ Respondent consumed excessive quantities of fentanyl, (Sublimaze, a Schedule II Controlled Dangerous Substance) directing some of the drug to personal use. (Petitioner's Exhibit # 4)

⁵ Respondent's urine tested positive for cocaine and barbiturates. (Petitioner's Exhibits # 3 and # 4)

e. On July 25, 1991, a Consent Order of the NJ Board was entered which suspended Respondent's license to practice medicine in New Jersey for three years, with the first five (5) months to be active suspension and the remaining (31) months stayed suspension, provided Respondent complied⁶ with certain requirements.

f. Paragraph # 8 of the NJ Board's July 25, 1991 Order mandated that "Respondent shall not dispense controlled dangerous substances nor shall he possess such substances..." (emphasis added)

g. During the period of active suspension, Respondent was required to complete an inpatient drug treatment program of at least 28 days and undergo psychiatric evaluation and treatment for at least one (1) year (if warranted). [T-41-42]

h. Respondent was also fined \$5,000 and assessed costs of \$2,885.65 and placed on probation.

i. On October 21 or 24, 1991, pursuant to the terms of the Consent Order, Respondent's license to practice medicine was restored by the NJ Board⁷. As indicated in Paragraph 2(d) of said Consent Order, "Respondent shall not consume, administer to himself or possess any (emphasis added) prescription medication except pursuant to a bona fide prescription written by another physician or dentist for good medical or dental cause." Respondent was required to surrender his Drug Enforcement Administration and State CDS registration certificates. [T-56]

j. The NJ board noted that Respondent had testified falsely before the NJ Board on previous occasions and was still in partial denial of his substance abuse problems. [T-73] However, since Respondent had apparently complied with the terms of the July 25, 1991 Order, the NJ Board allowed Respondent to resume the practice of medicine in New

⁶ Following the April 13, 1991 effective date of Respondent's suspension, he continued to practice medicine until the NJ Attorney General obtained a temporary restraining order, enjoining Respondent's continued practice of medicine in New Jersey. (Petitioner's Exhibit # 3)

⁷ Reinstatement Order dated October 21, 1991 and filed on October 24, 1991 with the New Jersey State Board of Medical Examiners. Exhibit C of Petitioner's Exhibit # 5

Jersey with severe restrictions and required strict compliance with all of the conditions enumerated by the NJ Board, in its October 1991 Order. (Petitioner's Exhibits # 3, 4 and 5)

5. In the April 16, 1992 NYS Consent Order, Respondent agreed to a three (3) year stayed suspension of his license to practice medicine in New York State and to a three (3) year period of probation under terms set forth in Exhibit B of the Consent Order. (Petitioner's Exhibit # 3)

6. Paragraph # 5 of Exhibit B of the NYS Consent Order (Terms of Probation) requires that Respondent "comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the July 25, 1991 and October 21 (24), 1991 orders of the State Board of Medical Examiners of the State of New Jersey;" (Petitioner's Exhibit # 3)

7. On May 4, 1992, the NY Board adopted the April 16, 1992 application for Consent Order of Respondent, including all provisions contained therein, as Order No. 92-39. (Petitioner's Exhibit # 3)

8. On October 22, 1993, the NJ Board found that Respondent had materially violated the prior order of the NJ Board of October 24 (21), 1991 by possessing an ampoule of Sublimaze on September 23, 1993. (Petitioner's Exhibit # 4)

9. On October 22, 1993, the NJ Board suspended Respondent's license to practice medicine in New Jersey for 31 months, with the first (24) months⁸ to be active suspension and the remaining (7) months stayed suspension, provided Respondent complied with all terms of the October 22, 1993 NJ Order and the terms of the October 24, 1991 NJ Order. (Petitioner's Exhibit # 4)[T-40]

⁸ Active suspension until October 26, 1995. (Petitioner's Exhibit # 4)

10. Both the July 25, 1991 and the October 21 (24), 1991 Orders of the NJ Boards prohibited the possession of controlled substances or prescription medication. Sublimaze is the type of substance that Respondent was prohibited from possessing. (Petitioner's Exhibits # 4 and 5)

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the March 2, 1994 Notice of Violation of Probation letter, are **SUSTAINED**:⁹

- Paragraph 1. : (3 - 7)
- Paragraph 2. : (6)
- Paragraph 3. : (8 - 10)

Based on the above, the Hearing Committee concludes that the March 2, 1994 Notice of Violation of Probation letter is **SUSTAINED**

⁹ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

DISCUSSION

The Respondent is charged with violating the terms and conditions of probation imposed on him pursuant to a NY Consent Order and subsequent Order No. 92-39 of the NYS State Board for professional Medical Conduct, dated May 4, 1992.

The New Jersey Reinstatement Order of October 21, 1991, filed October 24, 1991, sets forth specific terms of acceptable conduct and non-acceptable conduct which are conditions, limitations or terms of probation imposed on Respondent by the NJ Board. There is no question that the NJ Board found that Respondent possessed Sublimaze on September 23, 1993. Similarly, there is no question that Respondent's conditions of probation, under both the July 25, 1991 and the October 21 (24), 1991 Orders of the NJ Boards prohibited him from possessing substances such as Sublimaze. By possessing Sublimaze on September 23, 1993, Respondent violated the terms of the July 25, 1991 and October 21 (24), 1991 Orders of the NJ Boards.

Therefore, Respondent violated paragraph # 5 of Exhibit B of the NYS Consent Order (Terms of Probation), in that he did not comply with the aforementioned NJ Orders.

With regard to the testimony presented herein, including Respondent's, the Hearing Committee made an assessment and evaluated the credibility of each witness including possible bias. The witnesses were also assessed according to his training, experience, credentials and demeanor.

The Petitioner presented no fact witnesses, but relied on the documentary exhibits submitted in evidence as well as cross examination of witnesses presented by Respondent. The Hearing Committee found all of the documentary evidence presented by Petitioner to be reliable and dependable. Respondent did not contest most of the exhibits proffered by Petitioner but contested the New Jersey findings as being incorrect and improperly made.

The Respondent, Dr. Benson, offered generally questionable, at times implausible testimony. Obviously he had the greatest amount of interest in the results of these proceedings. As the New Jersey Board noted, Respondent had testified falsely on previous occasions. Respondent's other witness, Guiorgui Tchkadoua, although believable to a great extent, presented mostly irrelevant testimony to the violation of probation charge.

Using the above Findings and understanding, the Hearing Committee, unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct in New Jersey constituted a violation of the Terms and Conditions imposed by Order No. 92-39 and under the laws of New York State. The Department of Health has met its burden of proof as to three factual allegations contained in the Notice of Violation of Probation letter of March 2, 1994.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

§230(19) of the Public Health Law requires that the Hearing Committee consider "both the violation of probation and the prior adjudication of misconduct" in determining the appropriate penalty to impose.

The record establishes that Respondent possessed Sublimaze in violation of the New Jersey Orders and a fortiori in violation of the New York Order No. 92-39 of May 4, 1992. Respondent's prior misconduct is based on his drug abuse in New Jersey, his positive urine samples and his failure to cooperate with New Jersey representatives. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct and his testimony presented to the Hearing Committee.

The Hearing Committee concludes, based on the entire record, that revocation of Respondent's license is the appropriate penalty under the totality of the circumstances presented herein.

The Hearing Committee has noted that the State of New Jersey has not revoked Respondent's license, but suspended him for 31 months. While New Jersey may choose to place Respondent on probation, again, and monitor his practice, again, Respondent has repeatedly demonstrated that he can not be trusted to comply with whatever terms or Orders are imposed. The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health, safety and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

ORDER

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

1. The Notice of Violation of Probation letter (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

**DATED: Albany, New York
September, 30 1994**


ALBERT L. BARTOLETTI, M.D., (Chair),

**HOWARD SOHNEN, M.D.
IRVING CAPLAN**

To: Kevin C. Roe , Esq.,
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2429
Empire State Plaza
Albany, New York 12237-0032

Neal Stephen Simon, Esq.
460 West 34th Street,
12th Floor
New York, NY, 10001

Boris Barry Benson, M.D.
75 Hopper Farm Road
Upper Saddle River, NJ, 07458

A P P E N D I X I



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

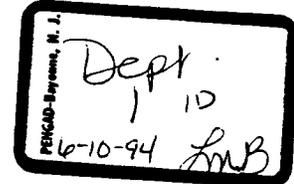
Mark R. Chassin, M.D. M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

March 2, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Boris Benson, M.D.
75 Hopper Farm Road
Upper Saddle River, N.J. 07458



RE: Notice of Violation of Probation

Dear Dr. Benson:

As the Director of the Office of Professional Medical Conduct of the New York State Department of Health, I have determined that you have violated the terms of probation imposed upon you by Order No. 92-39 dated May 4, 1992. My determination that you have violated the terms of your probation is based on the following facts:

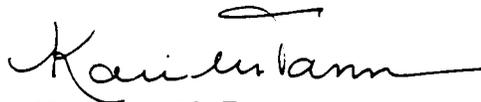
1. By Order No. 92-39 of the State Board for Professional Medical Conduct dated May 4, 1992, the State Board for Professional Medical Conduct accepted your Application for a Consent Order in which you admitted guilt to having had your license suspended in the State of New Jersey. Order No. 92-39 suspended your license for 3 years with said suspension stayed to become a period of probation under terms and conditions set forth therein.
2. Paragraphs five of the terms of probation requires that you comply with all terms conditions, restrictions and penalties to which you are subject pursuant to the July 25, 1991 and October 21, 1991 Orders of the State Board of Medical Examiners of the State of New Jersey.
3. On or about October 22, 1993, the New Jersey State Board of Medical Examiners found that you had materially violated the terms of the October 21, 1991 order by possessing Sublimaze in your office on September 23, 1993. As a result of your violation of the New Jersey order, your license to practice medicine in New Jersey was suspended for 31 months commencing on October 27, 1993. The final seven months of said suspension shall be stayed provided you comply with the orders of the New Jersey Board.

By this letter, I am initiating a violation of proceeding against you pursuant to New York Public Health Law §230(19) (McKinney Supp. 1994).

Be advised that if you do not dispute the facts forming the basis of my determination within 20 days of the date of this letter, I shall submit this matter to a committee on professional conduct for its review and determination. If within 20 days of the date of this letter, you dispute the facts forming the basis of my determination, you shall be afforded a hearing before a committee on professional conduct. You have a right to such a hearing and my be represented by counsel. A stenographic record of this hearing will be made. The committee, after providing you an opportunity to be heard, shall determine whether you have violated probation and, if so, shall impose an appropriate penalty as defined in New York Public Health Law §230-a (McKinney Supp. 1994). In determining the appropriate penalty, the committee shall consider both the violation of probation and the prior adjudication of misconduct. The chairperson of the committee shall issue an order adopting the decision of the committee on professional conduct. This order may be reviewed by the Administrative Review Board for Professional Medical Conduct.

Since this violation of probation proceeding may result in a determination that your license to practice medicine in New York be revoked, I urge you to consult with an attorney. If you or your attorney wish to discuss this matter, or to request a hearing, you should call Kevin C. Roe, Associate Counsel at (518) 474-8266.

Very truly yours,



Kathleen M. Tanner
Director
Office of Professional
Medical Conduct

RK/mak

cc: Robert Glickman, Esq. (Regular Mail)
15 Village Plaza
South Orange, NJ 07079

bcc: Kevin Roe
Cheryl Ratner