



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Office of Public Health

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

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

Karen Schimke
Executive Deputy Commissioner

June 30, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin C. Roe, Esq.
Associate Counsel
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Frank Benfatto, Jr., M.D.
149 Calle Bella Vista
Camarillo, California 93010

RE: In the Matter of Frank Benfatto, Jr., M.D.

Effective Date: 07/07/95

Dear Mr. Roe and Dr. Benfatto:

Enclosed please find the Determination and Order (No. 95-137) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "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 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.

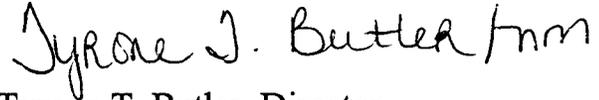
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler" followed by a flourish.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

IN THE MATTER
-OF-
FRANK BENFATTO, JR., M.D.

Respondent

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE

BPMC ORDER NO. 95- 137

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated February 1, 1995 which were served upon **FRANK BENFATTO, JR., M.D.**, (hereinafter referred to as "Respondent"). **ANDREW J. MERRITT, M.D., Chairperson, THERESE G. LYNCH, M.D., and GEORGE F. COUPERTHWAIT, JR.**, 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 June 14, 1995 at the offices of the New York State Department of Health (hereinafter referred to as "The Department"), Corning Tower, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by **KEVIN C. ROE, ESQ.**, Associate Counsel, Bureau of Professional Medical Conduct. Respondent made no appearance whatsoever. Evidence was received. Legal arguments were heard. A transcript of these proceedings was made.

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 Education Law Section 6530(9)(a)(i). 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 upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9)(b) (having been found guilty of misconduct by the authorized disciplinary agency of another state, where the conduct resulting in the discipline would amount to misconduct in this state) and 6530 (9)(d) (having a license to practice medicine revoked in another jurisdiction). The charge herein arises from the revocation of Respondent's license to practice medicine in California based upon a finding by that authority that Respondent was impaired by mental illness. The allegations in this proceeding and the underlying decision by the California authorities 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.

FINDINGS OF FACT

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

CONCLUSIONS

Respondent did not appear in this matter. Hence, there was no mitigation of any kind offered for him. The Record shows that Respondent has a serious mental condition. He was placed on probation by California authorities. He failed to follow the conditions of probation in that he has not cooperated in receiving treatment for his condition. This physician is clearly impaired and unwilling to help himself. He presently has the option of practicing medicine in this State. Such an option cannot be tolerated. Hence, the only responsible act for this Committee is to Revoke Respondent's license to practice medicine in this state.

ORDER

Based upon the forgoing facts and conclusions, IT IS HEREBY **ORDERED** THAT:

1. The Factual allegations in the Statement of Charges 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. Respondent's license to practice medicine in this state is **REVOKED**

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

4. This order shall take effect **THIRTY (30) DAYS** after service of this order by personal service or Certified Mail, upon Respondent.

Dated:

Marcellus, New York

6/22

1995



ANDREW J. MERRITT, M.D., Chairperson

**THERESE G. LYNCH, M.D.
GEORGE F. COUPERTHWAIT, JR**

TO: **KEVIN C. ROE, ESQ.**
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

FRANK BENFATTO, JR., M.D.
149 Calle Bella Vista
Camarillo, California 93010

APPENDIX ONE

Prima EXHIBIT 1
FOR IDENTIFICATION
LORA KAYE SAUCEDA, CSR, NP
June 14 19 95

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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
FRANK BENFATTO, JR., M.D. : PROCEEDING

-----X

TO: FRANK BENFATTO, JR., M.D.
149 Calle Bella Vista
Camarillo, California 93010

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 14th day of June, 1995 at 10:00 a.m. in the forenoon of that day at Meeting Room E, Cultural Education Building, Empire State Plaza Albany, New York 12237.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, 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 June 5, 1995.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 5, 1995 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 5, 1995

Peter D. Van Buren

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

Inquiries should be addressed to:

Kevin C. Roe
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
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
FRANK BENFATTO, JR., M.D. : CHARGES

-----X

FRANK BENFATTO, JR., M.D., the Respondent, was authorized to practice medicine in New York State on or about August 6, 1982 by the issuance of license number 151107 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 7, 1994, the Medical Board of California found that Respondent's ability to practice as a physician and surgeon in a safe manner is impaired by mental illness affecting competency in violation of §822 of the California Business and Professions Code. Respondent's license to practice in the State of California was revoked, with said revocation stayed and Respondent placed on probation for two years under certain terms and conditions. The conduct upon which the California findings were based would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(8).

FIRST AND SECOND SPECIFICATIONS
OUT OF STATE DISCIPLINE

A. Respondent is charged with 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 misconduct under the laws of New York State in violation of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1995) in that, Petitioner alleges:

1. The facts in Paragraph A.

B. Respondent is charged having his license to practice medicine revoked, suspended or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State in violation of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1995) in that, Petitioner alleges:

2. The facts in Paragraph A.

DATED: *April 5*, 1995
Albany, New York

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