



STATE OF NEW YORK DEPARTMENT OF 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

March 6, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Stein, Esq.
New York State Department of Health
Metropolitan Regional Office
5 Penn Plaza - Sixth Floor
New York, New York 10001

Henry Joseph Beckwitt, M.D.
4770 East Princeton Avenue
Englewood, Colorado 80110

RE: In the Matter of Henry Joseph Beckwitt, M.D.

Effective Date:

Dear Mr. Stein and Dr. Beckwitt:

Enclosed please find the Determination and Order (No. BPMC-96-42) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

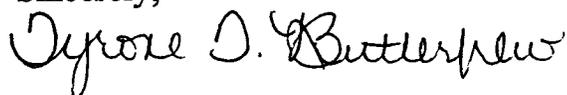
James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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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

COPY

IN THE MATTER
OF
HENRY JOSEPH BECKWITT, M.D.

DETERMINATION
AND
ORDER
NO. BMC-96-42

A Notice of Hearing and Statement of Charges, both dated December 29, 1995 were served upon the Respondent **HENRY JOSEPH BECKWITT, M.D.** **RANDOLPH MANNING** (Chairperson), **ADRIAN EDWARDS, M.D.** and **RICHARD N. PIERSON, JR., M.D.**, 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. **JEFFREY ARMON, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on January 31, 1996. The Department of Health appeared by **PAUL STEIN, ESQ.**, Associate Counsel. The Respondent appeared pro se. Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

The 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)(d). 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 parenthesis 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. Henry Joseph Beckwitt, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on February 4, 1958 by the issuance of license number 80374 by the New York State Education Department. (Ex. 2)

2. On or about December 17, 1993, the Colorado State Board of Medical Examiners issued a Stipulation and Final Agency Order, after an investigation disclosed facts that warranted the filing of a Formal Complaint by the Colorado Attorney General on or about April 1, 1993. The Formal Complaint alleged that Respondent's conduct in the treatment of six patients constituted acts or omissions of grossly negligent medical practice and/or two or more acts or omissions which failed to meet generally accepted standards of medical practice, in violation of Colorado Revised Statutes sec. 12-36-117(1)(p). (Ex. 3)

3. The Stipulation and Order placed Respondent's license to practice medicine in the State of Colorado on probationary status for five years which upon application by Respondent with a showing of acceptable performance while under restriction was to be reduced to two years;

required Respondent's successful completion of 50 hours of continuing medical education per year during said probationary period, at least 75 percent of which was to be in the field of internal medicine; and required the continuation of the monitoring of Respondent's medical practice at St. Anthony Hospital Central, with quarterly written reports submitted. (Ex. 3)

4. On or about December 21, 1995, the Colorado Board, after reviewing the terms and conditions of the above-mentioned Stipulation and Order, monitoring reports, and a letter of support submitted by Richard P. Bishop, M.D., Medical Staff President of Provenant St. Anthony Hospitals where Respondent's practice had been monitored, reduced Respondent's probationary period to two years, which had the effect of immediately terminating Respondent's probation and restoring his Colorado medical license to an unrestricted status. (Ex. A)

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 Committee concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Colorado Board took disciplinary action against Respondent's license to practice medicine in that State. The basis for such action was conduct which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law Section 6530(3) [practice of the profession with negligence on more than one occasion] and (4) [practice of the profession with gross negligence on a particular occasion]. Therefore, 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, unanimously determined that Respondent's license to practice medicine in New York State should be suspended for a two year period, said suspension to be stayed, and that Respondent be placed on probation during said two year period of suspension. The period of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in writing, that Respondent intends to commence a medical practice in New York State. 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.

Respondent contended that his practice and records had been monitored for several years in Colorado and had been found satisfactory and that additional practice monitoring would be unnecessary in the unlikely event that he should return to New York State to resume a medical practice. However, the Committee noted that Respondent's practice in Colorado was primarily in a structured hospital-based setting, that Respondent stated that he was reducing his hospital practice in that State and that any medical practice in New York would likely be essentially an office-based practice. (T. 37-9) The Committee believed that his sub-standard treatment of the six patients which led to the Colorado discipline, plus the fact that any future practice in this State would be in an unstructured setting, necessitated further practice monitoring to adequately protect the public in New York State. It concluded that placing Respondent on probation with conditions for reviewing his practice would be the most appropriate penalty in this case.

ORDER

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

1. The specification of professional misconduct contained within the Statement of Charges (Ex. 1) is **SUSTAINED**.
2. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of two years from the effective date of this Order, said suspension to be **STAYED**.
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.
4. The periods of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in accordance with the Terms of Probation, of the fact that Respondent intends to commence a medical practice in New York State.

DATED: Albany, New York
May 2 1996



RANDOLPH MANNING (Chair)

ADRIAN EDWARDS, M.D.
RICHARD N. PIERSON, JR., M.D.



TO: Paul Stein, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

Henry Joseph Beckwitt, M.D.
4770 East Princeton Avenue
Englewood, Colorado 80110

APPENDIX I

IN THE MATTER

OF

HENRY JOSEPH BECKWITT, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: HENRY JOSEPH BECKWITT, M.D.
4770 East Princeton Avenue
Englewood, CO 80110

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. 1995) and N.Y. State Admin. Proc. Act §§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 January 31, 1996, 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, 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, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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, 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.

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
December 29, 1995



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Paul Stein
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2617

**IN THE MATTER
OF
HENRY JOSEPH BECKWITT, M.D.**

STATEMENT
OF
CHARGES

HENRY JOSEPH BECKWITT, M.D., the Respondent, was authorized to practice medicine in New York State on February 4, 1958 by the issuance of license number 80374 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. 1. On or about December 17, 1993, the Colorado State Board of Medical Examiners (hereinafter referred to as "the Colorado Board"), issued a Stipulation and Final Agency Order ("the Stipulation and Order"), after an investigation disclosed facts that warranted the filing of a Formal Complaint (Case No. ME 93-2) by the Colorado Attorney General on or about April 1, 1993. The Formal Complaint alleged that Respondent's conduct in the treatment of six patients constituted acts or omissions of grossly negligent medical practice and/or two or more acts or omissions which fail to meet generally accepted standards of medical practice, in violation of Colorado Revised Statutes sec. 12-36-117(1)(p).

2. The Stipulation and Order, inter alia:

placed Respondent's license to practice medicine in the State of Colorado on probationary status for five years, which upon application by Respondent with a showing of acceptable performance while under restriction will be reduced to two years;

required Respondent's successful completion of 50 hours of continuing medical education per year of the probationary period, at least 75 percent of which shall be in the field of internal medicine; and

required the continuation of the monitoring of Respondent's medical practice at St. Anthony Hospital Central, with quarterly written reports submitted.

3. On or about December 21, 1995, The Colorado Board, after reviewing the terms and conditions of the above-mentioned Stipulation and Order, monitoring reports, and a letter of support submitted by Richard P. Bishop, M.D., Medical Staff President of Provenant St. Anthony Hospitals, where Respondent's practice had been monitored, reduced Respondent's probationary period to two years, which had the effect of immediately terminating Respondent's probation and restoring his Colorado medical license to an unrestricted status.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN BY A DULY AUTHORIZED
PROFESSIONAL DISCIPLINARY AGENCY OF ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law sec. 6530(9)(d) (McKinney Supp. 1995), in that he had his license to practice medicine revoked, suspended or had 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,

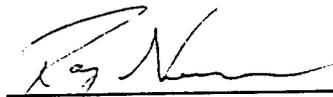
suspension or other disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely:

- a. Practicing the profession with gross negligence on a particular occasion (N.Y. Educ. Law sec. 6530 (4) (McKinney Supp. 1995)); and/or
- b. Practicing the profession with negligence on more than one occasion (N.Y. Educ. Law sec. 6530 (3) (McKinney Supp. 1995)).

as Petitioner specifically alleges:

1. The facts in Paragraph A1 through A3.

Dated: New York, New York
December 29, 1995



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

TERMS OF PROBATION

1. Respondent shall conduct himself at all times in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.
4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.
5. Prior to the commencement of a medical practice in New York State, Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department.

6. Respondent's practice of medicine shall be monitored by a physician monitor, board certified in an appropriate specialty, ("practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of the proposed practice monitor will be determined to be a violation of probation.

(a) The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or his/her designee, on a schedule to be determined by the office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis and shall examine a random selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall immediately be reported to the office of Professional Medical Conduct by the monitor.

(b) Any change in practice monitor must be approved in writing, in advance, by the Office of professional Medical Conduct.

(c) It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.

7. Respondent will maintain legible and complete medical records which accurately reflect evaluation and treatment of patients. Records will contain a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment. In cases of prescribing, dispensing, or administering of controlled substances, the medical record will contain all information required by state rules and regulations regarding controlled substances.

8. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.

9. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.