



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

August 19, 1994

RECEIVED

AUG 19 1994

MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Morris Harper, M.D.
7800 Orchid St. N.W.
Washington, D.C. 20012

Marcia E. Kaplan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Morris Harper, M.D.

EFFECTIVE DATE 8/26/94

Dear Dr. Harper and Ms. Kaplan :

Enclosed please find the Determination and Order (No. 94-160) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:mmn

Enclosure

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

IN THE MATTER
-OF-
MORRIS HARPER, M.D.

**DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE**

BPMC NO-94-160

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated June 29, 1994, which were served upon **MORRIS HARPER, M.D.** (hereinafter referred to as "Respondent"). **S. MOUCHLY SMALL, M.D.**, Chairperson, **F. MICHAEL JACOBIOUS, M.D.**, and **MS. OLIVE JACOB**, 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 August 11, 1994 at the offices of the New York State Department of Health, 5 Penn Plaza, New York, New York. The State Board For Professional Medical Conduct appeared by **MARCIA E. KAPLAN, ESQ.**, Associate Counsel, Bureau of Professional Medical Conduct. Respondent neither appeared in person nor by counsel. Evidence was received. 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). 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). The charge arises from the revocation of Respondent's license by the state of North Dakota. A Copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Decision and Order in Appendix I.

SIGNIFICANT LEGAL RULINGS

The Administrative Law Judge found that the State had made service upon Respondent pursuant to statute and that therefore, jurisdiction of Respondent had been established.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on page one through three of the Statement of Charges (Appendix I) as its findings of fact and incorporates them herein. While accepting the factual statement, the Committee offers this clarification to the tenth line from the bottom of page 2: Respondent falsely answered whether he had ever had any "hospital privileges limited (emphasis supplied)"

CONCLUSIONS

Respondent has elected not to contest the charges herein. The allegations are uncontroverted. Upon review of the of the documentation received in evidence, the Committee

finds that the license of Respondent to practice medicine in North Dakota was revoked on grounds that would constitute misconduct in New York state. The Committee can see no basis for leniency. Revocation is the only appropriate penalty under the circumstances.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Factual allegations in the Statement of Charges are **SUSTAINED**.

Furthermore, it is hereby ordered that;

2. The Specification of Misconduct contained within the Statement of Charges (Appendix I) is **SUSTAINED**;

Furthermore, it is hereby ordered that;

3. Respondent 's license to practice medicine in the state of New York is **REVOKED**

Dated: Buffalo, New York:

August 16, 1994

S. Mouchly Small M.D.
S. MOUCHLY SMALL, M.D., Chairperson

**F. MICHAEL JACOBUS, M.D.
MS. OLIVE JACOB**

TO:

MARCIA E. KAPLAN, ESQ.
Associate Counsel, Bureau of Professional Medical Conduct
New York State Department of Health
5 Penn Plaza
New York, New York 10001

MORRIS HARPER, M.D.
7800 Orchid St. N.W.
Washington, D.C. 20012

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: MORRIS HARPER, M.D. : PROCEEDING
: :
-----X

TO: MORRIS HARPER, M.D.
7800 Orchid St. NW
Washington D.C. 20012

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 11th day of August, 1994 at 10:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th 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, on or before August 1, 1994 .

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 August 1, 1994 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 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 29, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
212 613-2615

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

-----X

IN THE MATTER : STATEMENT
OF : OF
MORRIS HARPER, M.D. : CHARGES

-----X

MORRIS HARPER, M.D., the Respondent, was authorized to practice medicine in New York State on July 7, 1987 by the issuance of license number 170913 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine from January 1, 1993 through December 31, 1994 from 7800 Orchid St. NW, Washington D.C. 20012.

FIRST SPECIFICATION

**HAVING HIS LICENSE TO PRACTICE
MEDICINE REVOKED IN ANOTHER STATE**

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(d) (McKinney Supp. 1994) in that he had his license to practice medicine revoked where the conduct resulting in the revocation would, if

committed in New York state, constitute professional misconduct under the laws of New York State, specifically:

On or about November 12, 1993, the Respondent's license to practice medicine in North Dakota was revoked, the revocation was stayed, and Respondent was placed on probation for two years, with conditions including that he successfully complete a medical ethics course, subject his patient medical records to review by the North Dakota Board of Medical Examiners (N.D. Board), disclose all information requested by the N.D. Board, and pay the fees incurred by the Board in connection with its action against him up to \$500, pursuant to a Consent Order entered into by Respondent and the N.D. Board to resolve a pending disciplinary action against Respondent. The N.D. Complaint alleged that Respondent violated NDCC Sec. 43-17-31(1), which sets forth as grounds for disciplinary action the use of any false or fraudulent statement in connection with any of the licensing requirements, and Respondent agreed in the Amended Stipulation that the facts alleged in the complaint were grounds for disciplinary action by the N.D. Board. The conduct resulting in the revocation was Respondent's false answer "no" on his North Dakota license application to the question whether he had ever had any hospital privileges, or resigned hospital privileges to avoid formal action, when in fact, his privileges at the Irwin Army Community Hospital in Fort Riley, Kansas, were limited to supervision should he return to work at that facility as of August 20, 1991. This act, if committed within New York State, would constitute professional misconduct under N.Y. Educ. Law Sections 6530(1) (obtaining the license fraudulently), 6530(2) (practicing the

profession fraudulently), and/or 6530(21)
(willfully making or filing a false report).

DATED: NEW YORK, NEW YORK
June 29, 1994

A handwritten signature in black ink, appearing to read "C. Stern Hyman", written over a horizontal line.

CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct