



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

January 8, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Karen Eileen Carlson, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

Thomas Stephenson Holmes, M.D.
31431 NE 108th Street
Carnation, WA 98014

RE: In the Matter of Thomas Stephenson Holmes, M.D.

Dear Ms. Carlson and Dr. Holmes:

Enclosed please find the Determination and Order (No. 97-06) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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,

A handwritten signature in black ink that reads "Tyrone T. Butler nm". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
-OF-
THOMAS STEPHENSON HOLMES, M.D.

DECISION

AND

ORDER

OF THE

HEARING

COMMITTEE

BPMC ORDER

NO. 97 06

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated November 8, 1996 which were served upon **THOMAS STEPHENSON HOLMES, M.D.**, (hereinafter referred to as "Respondent"). **ARSENIO G. AGOPOVICH, M.D.**, Chairperson, **ALBERT L. BARTOLETTI, M.D.**, and **NANCY J. MACINTYRE, R.N., Ph.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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on December 18, 1996 at Hedley Park Place, Troy, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **KAREN EILEEN CARLSON, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct. Respondent did not appear pro se. 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 Section 6530(9) of the Education Law. 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 by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(d) (having been disciplined by the authorities of another state). The charges in this case arise from discipline imposed by the State of Washington, upon Respondent. The allegations in this proceeding and the underlying events 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 statements set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS
WITH REGARD TO
FACTUAL ALLEGATIONS
SPECIFICATIONS
AND
PENALTY

Petitioner herein has proven by a preponderance of the evidence that Respondent was disciplined by the authorities of another state. Therefore, the Factual Allegations and Specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

Respondent addressed the Committee in this matter and made a most favorable impression. Respondent did not deny any of the allegations or the importance of any of the infractions. Respondent presented himself as an honest professional who had an atypical lapse in his professional behavior. Moreover, the Washington authorities have shown their confidence in Respondent by lifting some of the penalties and requirements originally placed upon Respondent (see exhibit B).

In further mitigation, it is the opinion of the Committee that the nature of the work Respondent is engaged in is extremely challenging and important. That is, Respondent treats some of the most serious psychiatric cases in a setting that is difficult at best. All these factors: Respondent's forthright manner, his otherwise appropriate professional career, the favorable amendment by Washington and the commendable nature of his work, mitigate in favor of this physician. The Committee believes that Respondent shows a low likelihood of remission and a high likelihood that he will continue his career as a contributing member of the medical community. For all these reasons, the Committee sees no basis for revocation. Nevertheless, to protect the people of this state, probation, along the lines of that imposed by Washington would be in order.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby **ORDERED** that:

- 1 The Factual allegations in the Statement of Charges (Appendix One) 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 The license of Respondent to practice medicine in the state of New York is hereby **SUSPENDED**;

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

- 4 The said suspension of Respondent's license to practice medicine in the state of New York shall be **PERMANENTLY STAYED** upon completion of all disciplinary requirements imposed by the State of Washington or upon successful completion of probation in New York State, as set forth below, whichever occurs first;

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

- 5 Should Respondent choose to begin active practice in New York State, whether he has fulfilled his obligations to the State of Washington or not, he shall be subject to a period of **PROBATION** of not less than 3 years, according to the following terms. The failure to fulfill the obligations of this probation shall result in permanent suspension as set forth in Paragraph 3 herein:

- a. Respondent must substantiate that he has fulfilled all disciplinary requirements of the state of Washington to the date of the beginning of active practice in New York State.
- b. The Director of the Office of Professional Medical Conduct or his or her designee (hereinafter collectively referred to as "the Director") may, at his or her sole discretion, review the professional performance of Respondent by randomly selecting patient records, or hospital charts for patients who were cared for by Respondent.
- c. The Director shall require Respondent to obtain a practice monitor.

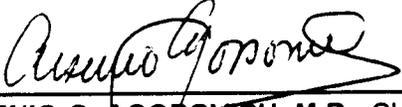
- i. The said practice monitor shall be approved by the Director
- ii. The costs associated with the said practice monitor shall be at Respondent's expense.
- ii. The said practice monitor shall randomly select and review a sufficient number of patient files to ensure familiarity with the quality of Respondent's practice.
- iii. The said practice monitor shall report to the Director at least quarterly with regard to the quality of Respondent's work.
- iv. The said practice monitor shall immediately report to the Director any deviation from accepted standards of medical care.

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

- d. The Director may impose such other terms and conditions as the Director in his or her sole discretion shall deem appropriate to protect the people of this state.
6. This order shall take effect **UPON RECEIPT or SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated:
Troy, New York

January 6 1997



ARSENIO G. AGOROVICH, M.D., Chairperson
ALBERT L. BARTOLETTI, M.D.,
NANCY J. MACINTYRE, R.N., Ph.D.

AR

TO:

KAREN EILEEN CARLSON, ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower
Albany, N.Y. 12237

THOMAS STEPHENSON HOLMES, M.D.
31431 NE 108th St.
Carnation WA 98014

APPENDIX ONE

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
THOMAS STEPHENSON HOLMES, M.D. : PROCEEDING

-----X

TO: Thomas Stephenson Holmes, M.D.
31431 NE 108th Street
Carnation, Washington 98014

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 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 18th day of December, 1996 at 10:00 in the forenoon of that day at the Legislative Office Building, 7th Floor - Room 711A, Empire State Plaza, Albany, New York 12248.

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, 5th Floor, 433 River Street, Troy, New York 12180-2299, 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 December 1, 1996.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to 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 an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before December 1, 1996 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
November 8, 1996

Peter D. Van Buren

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

Inquiries should be addressed to:

Karen Eileen Carlson
Assistant 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
THOMAS STEPHENSON HOLMES, M.D. : CHARGES

-----X

Thomas Stephenson Holmes, M.D., the Respondent, was authorized to practice medicine in New York State on October 20, 1994 by the issuance of license number 197568 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. Respondent, on or about October 6, 1995, was disciplined by the State of Washington, Department of Health, Medical Quality Assurance Commission [hereafter the "Commission"] for violating sections ~~18.130-18(4)~~ and (6) of the Registered Code of Washington. *18.130.180* *12/12/96* *AK*
2. More specifically Respondent was disciplined for negligently prescribing medications to three separate psychiatric patients.
3. Respondent entered into a Stipulated Findings of Fact, Conclusions of Law, and Agreed Order with the Commission

wherein he stipulated to his failure to exercise the requisite standard of care to three patients. Respondent also admitted that his unprofessional conduct created an unreasonable risk that these patients could have been harmed.

4. Respondent was ordered by the Commission to undergo a five year term of probation including, among other mandates:
 - Respondent must not practice in a solo practice
 - Respondent is to be assigned a proctor for monthly case review
 - Respondent shall complete continuing medical education courses
 - Respondent is to use triplicate prescription forms and submit copies of all forms to the Commission each month

5. The conduct resulting in the discipline imposed on Respondent would, if committed in New York State constitute professional misconduct under N.Y. Educ. Law §6530(3) (McKinney Supp. 1996) [practicing with negligence on more than one occasion].

SPECIFICATION

DISCIPLINE IN A SISTER STATE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) by reason of his 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 in that Petitioner charges:

1. The facts in Paragraphs 1, 2, 3, 4 and/or 5.

DATED: *November 8*, 1996
Albany, New York

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