



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

September 6, 2001

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Michael Sumner, M.D.  
414 Victoria Avenue North  
Hamilton, Ontario, Canada L8L5G8

William J. Beausoleil, Esq.  
1 Battery Park Plaza  
New York, New York 10004

### **RE: In the Matter of Michael Sumner, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-199) 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.

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.

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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

IN THE MATTER  
OF  
MICHAEL SUMNER, M.D.

DETERMINATION  
AND  
ORDER

BPMC #01-199

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated February 27, 2001, were served upon the Respondent, **MICHAEL SUMNER, M.D.** **WILLIAM MAJOR, JR., M.D.**, Chairperson, **ANDREW MERRITT, M.D.** and **MS. VIRGINIA MARTY**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on August 22, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGEN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared by **WILLIAM J. BEAUSOLEIL, ESQ.**

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

This 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, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of Section 6530 subdivisions (21) and (23). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

### WITNESSES

For the Petitioner: NONE

For the Respondent: NONE

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to 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. All Hearing Committee findings were unanimous unless otherwise specified.

1. **MICHAEL SUMNER, M.D.**, the Respondent, was authorized to practice medicine in New York State on a date and by the issuance of license number which cannot be ascertained from the unreadable licensing documents from the New York State Education Department adduced by Department (Ex. 5).
2. On October 9, 1998, The Discipline Committee of the College of Physicians and Surgeons of Ontario (hereinafter "Ontario Board"), by a Decision (hereinafter "Ontario Decision"), reprimanded Respondent, based upon his having given information concerning a patient's condition or professional services performed for a patient to a person other than the patient without the consent of the patient (Ex. 6).
3. On July 26, 2000, the Maryland State Board of Physician Quality Assurance, (hereinafter "Maryland Board"), by a Consent Order (hereinafter "Maryland Order"),

granted Respondent the entitlement to obtain a license subject to certain terms and conditions, including a reprimand and imposition of a \$5,000.00 fine upon issuance, if any, of such license, and suspension of such license should the license be granted and the fine not be paid, based upon his failure to report the Ontario action described in Fact finding #2 above on his Maryland medical license application (Ex. 5).

### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the Ontario and Maryland Boards' disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(23) – revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient;
- New York Education Law §6530(21) – willfully making or filing a false report;

### **VOTE OF THE HEARING COMMITTEE**

#### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another jurisdiction where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

## **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another jurisdiction, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state.

**VOTE: SUSTAINED (3-0)**

## **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that On October 9, 1998, Ontario Board issued a Decision reprimanding Respondent, based upon his having given information concerning a patient's condition or professional services performed for a patient to a person other than the patient without the consent of the patient (Ex. 6).

The Hearing Committee determines Respondent's conduct would have constituted misconduct had it been committed in New York State under New York Education Law §6530(23) – (revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient). Thus, Respondent committed misconduct under York Education Law §6530(9)(b) and (d).

In addition, on July 26, 2000, Maryland Board, by Consent Order, granted Respondent the entitlement to obtain a license (his Application for a license having previously been denied) subject to certain terms and conditions, including a reprimand and imposition of a \$5,000.00 fine upon issuance, if any, of such license, and suspension of such license should the license be granted and the fine not be paid, based upon his failure

to report the Ontario action described in Fact finding #2 above on his Maryland medical license application (Ex. 5).

Respondent's attorney contended at the hearing that Respondent did not thereafter obtain the Maryland license, that the penalties mentioned in the Consent Order were never imposed, and that the contents of the Consent Order do not, therefore, constitute grounds for discipline in New York.

The Hearing Committee rejects this contention. The Maryland Board's imposition of restrictions on Respondent's right to obtain a license in that state constitutes "disciplinary action" under Education Law 6530(9)(d), and the initial denial of his application for a license constituted disciplinary action that was "instituted" against him. Therefore, Respondent committed misconduct under New York Education Law §6530(9)(d).

Furthermore, Respondent was "found guilty" of improper professional practice or professional conduct by the Maryland Board in the Consent Order, when, in its Conclusions of Law, the Board found that "the Board could deny [Respondent's] application for medical licensure based upon [his] discipline by the [Ontario Board]...and willfully making a false representation when seeking or making application for licensure in Maryland". Thus, Respondent's conduct constituted misconduct in New York pursuant to New York Education Law §6530(9)(b).

The remaining issue to be decided is the appropriate penalty to be imposed against Respondent as a result of the misconduct under New York State Law. In this regard, the Hearing Committee determines that the appropriate penalty is a Censure and Reprimand and the imposition of a \$2,500 fine. These penalties are commensurate with the penalties imposed in Ontario and that would have been imposed in Maryland, had Respondent completed the licensure process.

Nothing in Respondent's presentation at the hearing mitigated against the imposition of these sanctions. In fact, the Hearing Committee was left less than impressed by Respondent's failure to attend the hearing or to present any significant evidence. Although Respondent did submit a "Declaration" to the Hearing Committee (Ex. A), this "Declaration" is not sworn and notarized, is an extremely poor substitute for personal testimony, and is of little value as evidence. In this declaration, Respondent stated that he hoped that any fine be "substantially lower" than the \$5,000 initially proposed by the Department due to his allegedly limited financial resources. The \$2,500 fine recommended by the Department at the hearing, and adopted by the Hearing Committee, is, in fact, substantially less than \$5,000.00, and is appropriate under the circumstances.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. A **CENSURE AND REPRIMAND** should be issued covering the findings of misconduct upheld herein.
2. A fine in the amount of Twenty-Five Hundred Dollars (\$2500.00) is assessed against the Respondent. Payment of the fine shall be due within 60 days of the effective date of this Order.

The Respondent shall make payment to the Bureau of Accounts Management, new York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York, 12237.

Any fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest; late payment charges and collection fees; referral to the New York Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Orchard Park, New York

Sept. 4, 2001

*William K. Major, Jr.*

**WILLIAM MAJOR, JR., M.D.**

**Chairperson**

**ANDREW MERRITT, M.D.**

**MS. VIRGINIA MARTY**

# APPENDIX 1

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

IN THE MATTER

OF

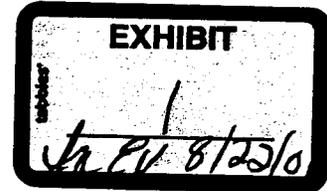
MICHAEL SUMNER, M.D.  
CO-00-09-4161-A

NOTICE OF

REFERRAL

PROCEEDING

TO: MICHAEL SUMNER, M.D.  
414 Victoria Avenue North  
Hamilton, Ontario, Canada L8L5G8



**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 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 21<sup>st</sup> day of March 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of

Adjudication”) as well as the Department of Health attorney indicated below, on or before March 12, 2001.

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 of 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 March 12, 2001, 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  
*February 27*, 2001

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

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0820

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

IN THE MATTER  
OF  
MICHAEL G. SUMNER, M.D.  
CO-00-09-4161-A

STATEMENT  
OF  
CHARGES

MICHAEL SUMNER, M.D., the Respondent, was authorized to practice medicine in New York state on July 28, 1967, by the issuance of license number 099470 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 9, 1998, The Discipline Committee of the College of Physicians and Surgeons of Ontario (hereinafter "Ontario Board"), by a Decision (hereinafter "Ontario Decision"), Reprimanded the Respondent, based on his having given information concerning a patient's condition or professional services performed for a patient to a person other than the patient without the consent of the patient.

B. On or about July 26, 2000, the Maryland State Board of Physician Quality Assurance, (hereinafter "Maryland Board"), by a Consent Order (hereinafter "Maryland Order"), granted Respondent <sup>the entitlement to obtain a</sup> a license. <sup>upon issuance, if any, of such</sup> Reprimanded him, imposed a \$5,000.00 fine, ~~and suspended~~ his license should the fine not be paid, based on willfully making a false representation when <sup>license was granted and the</sup> seeking or making application for license, based on the action described in Paragraph A above.

license,  
and  
suspension  
of such

subject to certain terms and conditions, including a reprimand and imposition of a

changes made by  
NW. pursuant to amendment  
of charges S.F.

C. The conduct resulting in the Ontario Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(23) (revealing of personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient).

D. The conduct resulting in the Maryland Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(21) (willfully making or filing a false report).

### **SPECIFICATIONS**

#### **FIRST AND SECOND SPECIFICATIONS**

Respondent violated New York Education Law §6530(9)(b) by reason of 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 professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in paragraph A and/or C.
2. The facts in paragraph A, B, and/or D.

#### **THIRD AND FOURTH SPECIFICATIONS**

Respondent violated New York State Education Law §6530 (9)(d) by reason of having had 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 disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

3. The facts in paragraphs A and/or C.

4. The facts in paragraph A, B, and/or D.

DATED: *Feb. 27*, 2001  
Albany, New York



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