



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

November 29, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert F. Altschuler, M.D.
128 South Meadowbrook Lane
Vestal, New York 13850

Charles O. Ingraham, Esq.
Aswad & Ingraham
46 Front Street
Binghamton, New York 13905

Robert F. Altschuler, M.D.
Susquehanna Anesthesia Affiliates
156 Corliss Avenue – Suite 107
Johnson City, New York 13790

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – 4th Floor
Troy, New York 12180

RE: In the Matter of Robert F. Altschuler, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-264) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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.

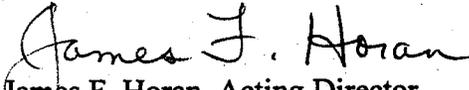
The notice of review served on the Administrative Review Board should be forwarded to:

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,


James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

IN THE MATTER
OF
ROBERT F. ALTSCHULER, M.D.

DETERMINATION
AND
ORDER

BPMC #07-264

A hearing was held on November 14, 2007, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated September 14, 2007, were served upon the Respondent, **Robert F. Altschuler, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Alexander M. Yvars, M.D.**, Chairperson, **Airlie Cameron, M.D., M.P.H.**, and **Ms. Carmela Torrelli**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared at the hearing and was represented by Aswad & Ingraham, **Charles O. Ingraham, Esq.**, of counsel.

Evidence was received and transcripts of these proceedings were made.

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

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 Section 6530(9)(a)(i). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Robert F. Altschuler, M.D.
Ms. Ruth E. Ferrari
Mark Rivlin, M.D.
Michael E. Wolff, M.D.

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.

1. Robert F. Altschuler, M.D., the Respondent, was authorized to practice medicine in New York State on October 20, 1978, by the issuance of license number 136057 by the New York State Education Department (Petitioner's Ex. 4).

2. On December 13, 2005, in the Vestal Town Court, Criminal Part, Broome County, New York, the Respondent was found guilty, based on a plea of guilty, of Driving While Intoxicated, in violation of New York Vehicle and Traffic Law Section 1192.3, a misdemeanor, and was sentenced to a \$500.00 fine and a \$190.00 surcharge (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

On November 18, 2005, the Respondent, while driving in an intoxicated state, drove into another automobile. He was arrested and charged with Driving While Intoxicated. On December 13, 2005, the Respondent pled guilty to and was convicted of Driving While Intoxicated.

The Respondent admitted that he had driven while intoxicated on November 18, 2005, but argued that this did not mean that he had a problem with alcohol. He testified that he is not an impaired physician and that the emotional trauma he experienced after the November 2005 arrest has caused him to limit his alcohol intake to virtually nothing. He testified that he has had no more than five drinks since the November 2005 incident. The Respondent, an anesthesiologist, testified that on the evening of the incident, he was not on call at the hospital where he practiced.

In support of his position, the Respondent called as witnesses two anesthesiologists from his group practice, Dr. Rivlin and Dr. Wolff. Dr. Rivlin testified that he had worked closely with the Respondent for eighteen years. He testified that if an

intoxicated anesthesiologist was working in an operating room, someone in the room would notice it. Dr. Rivlin testified that this had never happened with the Respondent. Dr. Wolff testified that he had been working closely with the Respondent since 1988 and had never seen him impaired or under the influence of alcohol. He also testified that no colleague had ever expressed concerns to him regarding the Respondent and alcohol.

In connection with the Respondent's arrest and conviction, he was required to undergo an alcoholism evaluation by Ms. Ruth Ferrari, a clinical nurse practitioner in psychiatry. Ms. Ferrari testified that she performed this evaluation and concluded that the Respondent was not an alcoholic and did not need alcoholism treatment.

Despite the assurances of the Respondent and his witnesses, there is reason to be concerned about the Respondent and alcohol. The most important concern is that the November 2005 incident is not the only alcohol-related problem the Respondent has had. On October 20, 2000, the Respondent was arrested for Driving While Intoxicated. He was convicted of Driving While Ability Impaired in violation of Vehicle and Traffic Law Section 1192(1) (Petitioner's Ex. 6). Also, there was an occasion in 1990 and another in 1991, when hospital staff reported that he smelled of alcohol while performing anesthesia services at the hospital.

The Respondent testified that on each of these occasions from the early 1990's, he consumed a small amount of alcohol while neither on duty at the hospital nor on call. A hospital staff member, nonetheless, called him and requested that he come in, which he did. He argued that under these circumstances, the smell of alcohol on his breath while working at the hospital was not evidence of an alcohol problem. The Hearing Committee, however, is not certain that it can trust these uncorroborated explanations of the 1990 and 1991 incidents, given the existence of the drunk driving incidents from 2000 and 2005.

The Hearing Committee also cannot place total faith in Ms. Ferrari's evaluation. She testified that she drew her conclusions about the Respondent after spending approximately one hour with him. We believe that a more thorough evaluation is necessary, given the number of incidents in the Respondent's past that raise questions about his alcohol use. The Respondent will be placed on probation and required to submit to an evaluation by the Committee for Physicians' Health ("CPH"). If the conclusion of that evaluation is that the Respondent is not in need of any treatment or recovery services, probation will terminate. If the conclusion of that evaluation is that the Respondent has an alcohol problem requiring treatment and a recovery program, the Respondent must sign a contract with CPH to participate in such a program. The Respondent will continue on probation until CPH informs the Petitioner that the Respondent is no longer in need of its services. The details of the Respondent's probation appear in the Order below.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded for driving while intoxicated.
2. The Respondent is placed on probation under the terms and conditions in paragraphs 3 through 14 of this Order.
3. Within 30 days of the effective date of this Order, the Respondent shall request CPH to perform an evaluation of whether the Respondent has a problem with alcohol requiring treatment or recovery services. The Appellant shall authorize CPH to provide the Petitioner's Office of Professional Medical Conduct ("OPMC") with the results of the evaluation. If the evaluation concludes that the Respondent does not have an alcohol problem and does not require treatment or recovery services, the Respondent's term of probation will be terminated immediately.

4. If the evaluation concludes that the Respondent does have an alcohol problem requiring treatment or recovery services, the Respondent shall enter a contract with CPH that fully describes the terms, conditions and duration of a recovery program. The Respondent shall fully comply with the contract. Probation shall continue until CPH reports to OPMC that the Respondent has successfully completed the recovery program and is no longer in need of services from CPH.

5. The Respondent shall provide a written authorization for CPH to provide the Petitioner with all information or documentation requested by OPMC to determine whether the Respondent is in compliance with the contract.

6. The Respondent shall authorize CPH to report to OPMC if the Respondent refuses to comply with the contract, if he refuses to submit to treatment, or if his impairment is not substantially alleviated by treatment. CPH shall report immediately to OPMC if the Respondent is regarded at any time to be an imminent danger to the public.

7. The Respondent shall be responsible for all costs of participating in the CPH program.

8. While the Respondent is on probation, he shall remain drug and alcohol free.

9. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. If, during the period of probation, the Respondent commits professional misconduct as enumerated in New York State Education Law Sections 6530 or 6531, such act shall be deemed a violation of probation and an action may be taken against the Respondent's license pursuant to New York State Public Health Law Section 230(19).

10. The Respondent shall submit to OPMC written notification of any change in employment and practice, professional and residential addresses and telephone numbers

within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

11. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order and shall personally meet with a person designated by OPMC when so requested.

12. The Respondent's professional performance may be reviewed by OPMC. This review may include, but is not limited to, a review of office records, patient records and hospital charts, and interviews with or periodic visits with the Respondent and his staff at practice locations or OPMC offices.

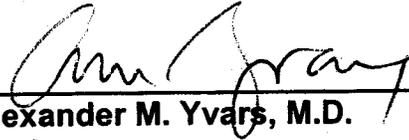
13. The period of probation shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. The Respondent shall notify OPMC, in writing, if the Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of 30 consecutive days or more. The Respondent shall notify OPMC again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the Respondent's return to practice in New York State.

14. Upon receipt of evidence of noncompliance with the terms of probation, OPMC or the State Board for Professional Medical Conduct may initiate a violation of probation proceeding and/or any other proceeding against the Respondent as may be authorized by law.

15. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Gloversville, New York

~~11/26/~~, 2007

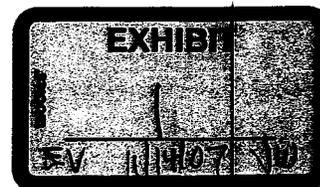


Alexander M. Yvars, M.D.
Chairperson

Airlie Cameron, M.D., M.P.H.
Carmela Torrelli

APPENDIX I

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



IN THE MATTER

OF

ROBERT F. ALTSCHULER, M.D.
CO-07-04-1786-A

NOTICE OF

REFERRAL

PROCEEDING

TO: ROBERT F. ALTSCHULER, M.D.
128 South Meadowbrook Lane
Vestal, NY 13850

ROBERT F. ALTSCHULER, M.D.
Susquehanna Anesthesia Affiliates
156 Corliss Avenue
Suite 107
Johnson City, NY 13790

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§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 October, 2007, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of 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 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 written brief and affidavits with the Committee. Six copies of all papers you 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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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

Sept. 14, 2007


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) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ROBERT F. ALTSCHULER, M.D.
CO-07-04-1786-A

STATEMENT
OF
CHARGES

ROBERT F. ALTSCHULER, M.D., Respondent, was authorized to practice medicine in New York state on October 20, 1978, by the issuance of license number 136057 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 13, 2005, in the Vestal Town Court, Criminal Part, Broome County, New York, Respondent was found guilty, based on a plea of guilty, of Driving while intoxicated, in violation of New York Vehicle and Traffic Law §1192.3, a misdemeanor, and was sentenced to a \$500.00 fine and a \$190.00 surcharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Sept. 14*, 2007
Albany, New York

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