



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

August 7, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Ross Tinkler, M.D.
709 Hayden Hill Road
Torrington, Connecticut 06790

Sharif Mahdavian, Esq.
Friedman and Mahdavian
The Bar Building
36 West 44th Street
New York, New York 10036

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Hedley Park Place, 1st Floor
Troy, New York 12180-2299

RE: In the Matter of Michael Ross Tinkler, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-243) 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.

Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

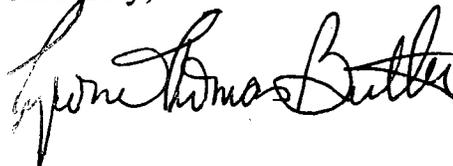
The notice of review served on the Administrative Review Board should be forwarded to:

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". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BMPC No. 02-243

IN THE MATTER
OF
MICHAEL ROSS TINKLER, M.D.

A Notice of Referral Proceeding and Statement of Charges, both dated May 1, 2002, were served upon the Respondent, **MICHAEL ROSS TINKLER, M.D.** **SHARON KURITZKY, M.D.**, Chairperson, **JOEL H. PAULL, D.D.S., M.D., J.D.** and **MS. DEANNA KRUSENSTJERNA**, 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 July 18, 2002, 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 BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and by **SHARIF MAHDAVIAN, 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 subdivisions (8), (16), (20), and (32). 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:

Michael Ross Tinkler, 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 unless otherwise specified.

1. **MICHAEL ROSS TINKLER, M.D.**, the Respondent, was authorized to practice medicine in New York State on December 6, 1994, by the issuance of license number 197994 by the New York State Education Department (Ex. 4).
2. On October 16, 2001, the State of Connecticut Medical Examining Board approved a Consent Order (hereinafter "Connecticut Order") agreed to by Respondent and the Connecticut Department of Public Health, Bureau of Regulatory Services. Pursuant to this order, Respondent's license to practice medicine was placed on probation for five years, under terms and conditions that required Respondent to participate in a rehabilitation program, participate in regularly scheduled therapy with a licensed psychiatrist, refrain from ingestion of alcohol or other use of any controlled substance, and submit to twice-weekly random urine tests. The order was predicated upon admissions by Respondent that he had been abusing alcohol and controlled substances; that he had purchased large quantities of controlled substances and had them delivered to his home; and that he had prescribed controlled substances for his family members when he was not the primary care physician, and that he maintained no medical records for these family members (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Connecticut Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(8) (being a habitual abuser of alcohol or dependent upon or a habitual user of narcotics or other drugs);
- New York Education Law §6530(32) (failure to maintain adequate medical records);

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 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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had 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.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that Respondent and the Connecticut Department of Public Health, Bureau of Regulatory Services agreed to a Consent Order, approved by the Connecticut Board on October 16, 2001. Pursuant to this order, Respondent's license to practice medicine was placed on probation for five years, under terms and conditions that required Respondent to participate in a rehabilitation program, participate in regularly scheduled therapy with a licensed psychiatrist, refrain from ingestion of alcohol or other use of any controlled substance, and submit to twice-weekly random urine tests. The order was predicated upon admissions by Respondent that he had been abusing alcohol and controlled substances; that he had purchased large quantities of controlled substances and had them delivered to his home; and that he had prescribed controlled substances for his family members when he was not the primary care physician, and that he maintained no medical records for these family members (Ex. 5).

The Hearing Committee determines that this Order constitutes evidence of misconduct in New York State pursuant to the New York definitions of misconduct cited above in the Hearing Committee Conclusions section of this decision. The Hearing Committee could find, however, no support for the charge that the Connecticut Order includes findings tantamount to "moral unfitness to practice medicine" under the New York definitions of misconduct (New York Education Law §6530(20)). In addition, the Department charged that the Connecticut findings detailed acts that would have been misconduct under New York Education Law §6530(16), which covers "willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of medicine". It is not clear from the New York Charges or the Department's presentation at the hearing what law, rule or regulation

*

allegedly violated by Respondent was being referred to, so the Hearing Committee concludes that the Department failed to establish how Respondent's conduct would have constituted misconduct in New York under this subdivision.

Having found that Respondent committed misconduct under New York Law, as evidenced by his admissions in the Connecticut Order, the Hearing Committee now addresses itself to the penalty to be imposed for that misconduct. In evaluating various possible penalties, the Hearing Committee considered, in addition to the evidence directly relating to the charges and evidence presented by Respondent, evidence presented by the Department that Respondent previously, in May, 1995, entered into a consent agreement with the State of Connecticut, Department of Health and Addiction Services ("the earlier agreement"), wherein he admitted that he had abused controlled substances and that he had a psychiatric condition for which he was receiving treatment (Ex. 6). Pursuant to this agreement, Respondent agreed to a 5-year program of rehabilitation and monitoring. Respondent admitted that the Consent Order that led to the instant hearing manifested a relapse of his addictions after the effective period of the earlier agreement.

The Hearing Committee concludes that Respondent's problems with addiction to alcohol and controlled substances are serious, but it also concludes that Respondent is making good progress toward recovery from these addictions, and that there is little danger to his patients from his continued practice of medicine. Strong support for this conclusion is found in the Respondent's testimony and the documentary evidence presented on his behalf. The Director and Medical Director of the Connecticut State Medical Society's Physician Health Program ("PHP", which is monitoring Respondent's compliance with the Connecticut Order), in a letter to the Hearing Committee (Ex. A), detailed Respondent's self-referral in January 2000, his participation in an inpatient evaluation at the Talbot

Recovery Campus, his participation in an inpatient program at the Marworth Center, his consistently negative toxicology screens, his progress in ongoing therapy and his regular participation in 12-step support group meetings. The conclusion is expressed in this letter that:

...the Physician Health Program has found that Dr. Tinkler is in compliance with his Order and all reports and all other indications are that he is practicing with skill and safety and in an alcohol and substance-free state.

The letter concludes with the assessment that Respondent is able to practice with skill and safety and the recommendation that the Hearing Committee in the instant case take action no more severe than that taken by the State of Connecticut.

The positive statements in this document regarding Respondent's current work performance were corroborated by a letter (Ex. B) to the Hearing Committee from Respondent's supervisor, the Director of Emergency Services at MidState Medical Center, who referred to Respondent as "one of the best clinicians" at the hospital, and who indicated that Respondent "appears to truly understand the gravity of his past conduct...and appears to take his rehabilitation program very seriously."

This assessment is consistent with that reached by the Hearing Committee after evaluating Respondent's testimony, the critical element of which was his admission that his initial period of rehabilitation, after the first Consent Order, did not achieve lasting success because he viewed it as a "sentence" rather than as a permanent change in his life, whereas he obtained the realization during his Marworth stay (February-May, 2000) that he was an addict and needed to deal with his problems on a long-term basis. This realization, the Hearing Committee opines, bodes well for Respondent's recovery prospects and his continued safe practice of medicine.

For these reasons, the Hearing Committee is inclined to impose as the penalty for Respondent's misconduct a 5-year period of probation, to commence if and when Respondent returns to New York to practice medicine. This penalty will not only serve to protect the health and safety of New York residents against any relapse in Respondent's addictions, but will encourage and support Respondent's recovery efforts. The Hearing Committee feels that a penalty more harsh than this might tend to have the opposite effect, and is unnecessary under the circumstances. The details of the probation imposed are set forth in greater detail in the accompanying Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. If, at some future date, the Respondent chooses to resume practice in New York, Respondent must provide thirty (30) days prior written notice concerning his intention to the New York State Office of Professional Medical Conduct ("OPMC"). This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility since the date of this hearing, and shall include verification of the successful conclusion of Respondent's Connecticut probation.
2. OPMC will monitor Respondent's completion of a five (5) year probationary period, to commence upon the resumption of lawful medical practice in New York State, and to be monitored by OPMC.
3. The terms of Respondent's probation are as follows:
 - A). During the period of probation set forth above, Respondent shall remain alcohol and drug free, except for drugs prescribed for Respondent by another physician for legitimate medical purposes.
 - B). During the period of probation, Respondent shall obtain sobriety monitoring, detailed more fully below. The monitor shall be a health care professional or agency proposed by Respondent and subject to the written approval of OPMC or its designee. Respondent shall be responsible for arranging for the monitor, and for ensuring that the monitoring meets the requirements of this order. OPMC shall ensure that the monitor is familiar with the provisions of this order. Respondent shall submit to OPMC or its designee the name of a proposed successor within seven days of learning that the approved sobriety monitor is no longer willing or able to serve.
 - C). The sobriety monitor shall direct Respondent to submit to random, supervised, unannounced tests of blood, breath and/or urine for the presence of drugs and/or alcohol, and shall report to OPMC or its designee within 24 hours if at any time such

a test is refused by Respondent or is positive. Respondent shall report as soon as practicable to submit to drug and/or alcohol screening. Respondent shall be screened at a frequency in the discretion of the monitor, subject to the approval of OPMC or its designee.

- D). Respondent shall notify in writing any group, clinic or medical facility with whom he becomes affiliated or at which he practices during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.
- E). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which he is affiliated or at which he practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired Respondents. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- F). Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice, professional and residential addresses or 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 during the probationary period, within 30 days of each event;
- G). Respondent shall notify the Director of OPMC, in writing, if he ceases to be engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status. Respondent's probation shall be tolled while Respondent is not practicing in New York during such period and shall resume upon his return to practice in New York State.
- H). 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. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- I). Respondent shall comply with all terms, conditions, and restrictions to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance.

- J). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.
- K). OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation or any individual provision(s) thereof, if it is satisfied that such relief would not be contrary to the best interests of New York State residents.

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: Amherst, New York

August 5, 2002


SHARON KURITZKY, M.D.
Chairperson

JOEL H. PAULL, D.D.S., M.D., J.D.
MS. DEANNA KRUSENSTJERNA

APPENDIX 1

7/19/02
J. E. V.STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
MICHAEL ROSS TINKLER, M.D.
CO-01-12-6150-A

NOTICE OF
REFERRAL
PROCEEDING

TO: MICHAEL ROSS TINKLER, M.D.
709 Hayden Hill Road
Torrington, CT 06790

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 20th day of June 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th 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, 5th 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 June 10, 2002.

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 June 10, 2002, 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

May 1, 2002

Peter D. Van Buren

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
MICHAEL ROSS TINKLER, M.D.
CO-01-12-6150-A

STATEMENT
OF
CHARGES

MICHAEL ROSS TINKLER, M.D., the Respondent, was authorized to practice medicine in New York state on December 6, 1994, by the issuance of license number 197994 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 16, 2001, the State of Connecticut, Department of Public Health, Bureau of Regulatory Services, (hereinafter "Connecticut Board"), by a Consent Order (hereinafter "Connecticut Order"), placed Respondent's license to practice medicine on probation for five (5) years, under terms and conditions that required Respondent to participate in a rehabilitation program, participate in regularly scheduled therapy with a licensed psychiatrist, refrain from ingestion of alcohol or other use of any controlled substance, and submit to twice-weekly random urine tests, based on alcohol and substance abuse, having prescribed controlled substances for his family members when he was not the primary care physician, and failure to maintain records for family members for whom he prescribed medications.

B. The conduct resulting in the Connecticut Board's disciplinary action 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(8) (being a habitual abuser of alcohol, or dependent on or a habitual user of narcotics or other drugs);
2. New York Education Law §6530(16) (willful or grossly negligent failure to comply with federal, state or local laws, rules or regulations governing the practice of medicine);

3. New York Education Law §6530(20) (moral unfitness); and/or
4. New York Education Law §6530(32) (failure to maintain adequate medical records).

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 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 Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by 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:

2. The facts in Paragraphs A and/or B.

DATED: *May 1*, 2002
Albany, New York


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