



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

January 4, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Wilfred T. Friedman, Esq.
36 West 44th Street
New York, New York 10036

Eric Ader, D.O.
34 Rita Court
North Massapequa, New York 11758

RE: In the Matter Eric Ader, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-02) 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:nm
Enclosure

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

IN THE MATTER
OF
ERIC ADER, D.O

COPY
DETERMINATION
AND
ORDER

OPMC-00-02

A Notice of Referral Proceeding and Statement of Charges, both dated July 21, 1999, were served upon the Respondent, **ERIC ADER, D.O. CHARLES J. VACANTI, M.D.** (Chairperson), **ROBERT KLUGMAN, M.D.** and **MR. ALAN KOPMAN**, 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. **JEFFREY ARMON**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 29, 1999. The Department of Health appeared by **HENRY M. GREENBERG**, General Counsel, by **ROBERT BOGAN, Esq.**, of Counsel. The Respondent appeared and was represented by **WILFRED T. FRIEDMAN, Esq.** Evidence was received and witnesses sworn and heard 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, Respondent was charged with professional misconduct pursuant to Education Law Sections 6530(9)(a). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Respondent was authorized to practice medicine in New York State on October 31, 1991 by the issuance of license number 187448 by the New York State Education Department. (Ex. 3)

2. On or about August 17, 1998, Respondent was found guilty in County Court, Nassau County, New York of Driving While Intoxicated, a Class E felony, in violation of § 1192.2 of the Vehicle and Traffic Law of New York State. On or about September 26, 1998, Respondent was sentenced to a fine of \$3,500.00, five years probation and revocation of his driver's license. (Ex. 4)

3. The conviction was Respondent's third for Driving While Intoxicated since 1993 and was based on his fifth alcohol related arrest. (Ex. 4)

4. Respondent temporarily surrendered his license to practice medicine in 1992. His license was restored following a hearing held in December, 1995. He temporarily surrendered his license a second time in or around April, 1997 and currently has no active license to practice in New York.

(T. 31-3)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee determined that the Department had met its burden of proof by concluding that the preponderance of the evidence demonstrated that Respondent had been convicted of committing an act constituting a crime under New York state law. The Hearing Committee therefore determined to sustain the Specification set out in the Statement of Charges (Ex. 1).

DISCUSSION AND DETERMINATION OF PENALTY

Public Health Law § 230.13(a) provides that the temporary surrender of a license does not bar disciplinary action. The Department therefore had authority to proceed with charges of unprofessional misconduct when Respondent was convicted of a felony while his medical license was temporarily surrendered. The Committee considered Respondent's felony conviction and history of alcohol abuse as indications of his lack of fitness to hold a medical license and did not intend to minimize its concerns. However, the fact that Respondent does not currently have an active license was seen as evidence that the public safety would not be endangered if his license was not permanently revoked.

Respondent provided testimony from his alcohol and substance abuse counselor and from family members each of whom indicated that Respondent has finally confronted his problem of abuse and is now serious about rehabilitating himself. Respondent testified that he has remained sober since February, 1999 and that his motivation is based on a genuine fear of incarceration which he faces should he relapse again. He described his change in attitude since he was advised by his probation officer that he would be sent to a state prison if he used alcohol or illegal drugs again and indicated the efforts he had made to build a system of support. The Committee members felt Respondent was making a sincere effort to remain sober and believed it most important that he did not feel that he was ready at the present time to consider applying for restoration of his license.

The Hearing Committee determined to not revoke Respondent's license. While Respondent's history of recidivism was considered, the Committee felt that Respondent should be provided the opportunity to recover and turn his life around. There is no danger presented to the public because he has no active license. Respondent was uncertain as to when, or even if he would ever, apply for restoration. The Committee agreed that Respondent was presently not capable of returning to

practice and felt that the evidence presented clearly demonstrated that he would need significant retraining and subsequent supervision before returning to an active status. The Committee was certain that all relevant information, including that related to the most recent felony conviction, would be presented to any Restoration Committee that might be convened in the future. In addition, a Restoration Committee would certainly have the authority to impose any conditions it may feel would be appropriate to protect the public in the event Respondent's license is restored. The Committee felt it unnecessary to usurp the authority of a Restoration Committee by imposing penalties that would be conditioned on Respondent's recovery of his license. The Hearing Committee concluded that it could issue a letter of Censure and Reprimand to the holder of an inactive license and determined to do so to indicate a serious concern related to Respondent's conduct.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification contained within the Statement of Charges (Ex. 1) is **SUSTAINED**, and;
2. Respondent's license to practice medicine **NOT BE REVOKED**; and
3. Respondent be issued a letter of **CENSURE** and **REPRIMAND**, and;
4. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

Dated: Albany, New York

30 December, 1999


CHARLES J. VACANTI, M.D. (Chairperson)

**ROBERT KLUGMAN, M.D.
ALAN KOPMAN**

TO:

Robert Bogan, Esq.
NYS Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
Hedley Park Place-433 River Street, 4th Floor
Troy, New York 12180-2299

Wilfred T. Friedman, Esq.
36 West 44th Street
New York, New York 10036

Eric Ader, D.O.
34 Rita Court
North Massapequa, New York 11758

APPENDIX I

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
ERIC ADER, D.O. : PROCEEDING

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TO: ERIC ADER, D.O.
801 Richmond Road
East Meadow, NY 11554

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 19 day of August, 1999 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 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, 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 9, 1999.

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 August 9, 1999 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
July 21, 1999

Peter D. Van Buren

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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518) 402-0820

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ERIC ADER, D.O. : CHARGES

-----X

ERIC ADER, D.O., the Respondent, was authorized to practice medicine in New York state on October 31, 1991, by the issuance of license number 187448 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 17, 1998, in the County Court, Nassau County, New York, Respondent was found guilty of Driving while Intoxicated, a class E felony, in violation of §1192.2 of the Vehicle and Traffic Law of the State of New York. On or about September 26, 1998, Respondent was sentenced to a \$3500.00 fine, five years probation, and his license was revoked.

SPECIFICATION

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

1. The facts in paragraphs A.

DATED: July 31, 1999
Albany, New York


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