



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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

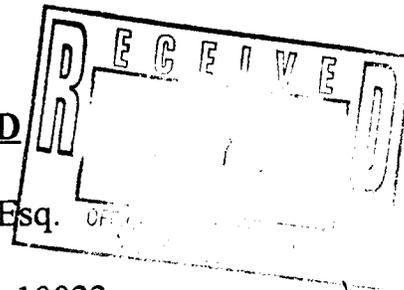
Karen Schimke
Executive Deputy Commissioner

March 6, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza - Suite 601
New York, New York 10001

Wilfred T. Friedman, Esq.
598 Madison Avenue
New York, New York 10022



Brian Charles Pederson, M.D.
75 Castle Road
Chappaqua, New York 10514

Effective Date March 13, 1996

RE: In the Matter of Brian Charles Pederson, M.D.

Dear Ms. Kaplan, Mr. Friedman and Dr. Pederson:

Enclosed please find the Determination and Order (No. BPMC-96-43) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 all action 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
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

IN THE MATTER
OF
BRIAN CHARLES PEDERSON, M.D.

DETERMINATION

AND

ORDER

NO. BPMC-96-43

A Notice of Hearing dated November 16, 1995, and Statement of Charges dated November 17, 1995 were served upon the Respondent **BRIAN CHARLES PEDERSON, M.D.** **RANDOLPH MANNING** (Chairperson), **ADRIAN EDWARDS, M.D.** and **RICHARD N. PIERSON, JR., M.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. **JEFFREY ARMON, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on January 31, 1996. The Department of Health appeared by **MARCIA E. KAPLAN, ESQ.**, Associate Counsel. The Respondent was represented by **WILFRED T. FRIEDMAN, ESQ.** Evidence was received, witnesses were 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

The 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 is charged with professional misconduct pursuant to Education Law Section 6530(9)(e). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The Following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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. Brian Charles Pederson, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on or about November 5, 1984 by the issuance of license number 160726 by the New York State Education Department. (Ex. 2B)
2. On or about November 28, 1994, Respondent was found by the Commissioner of Health to be in violation of Article Thirty Three of the Public Health Law, as follows:
 - a. Respondent violated Public Health Law Sections 3304(a) and 3397(a)(iii) in that between July 22, 1992 and January 22, 1994, he improperly obtained quantities of controlled substances including Lortab, Chloral Hydrate, Ambien, Tylenol with Codeine #4, Vicodin Tuss, Vicodin, Lomotil, Hycotuss, Tussionex, and Hycodan on or about 47 occasions by entering false names of the ultimate users on prescriptions; and
 - b. Respondent violated Public Health Law Sections 3304(a) and 3397(1)(a)(i) in that between March 13, 1993 and November 13, 1993 he improperly obtained 31 prescriptions of two other licensed physicians by the use of fraud, deceit, misrepresentation or subterfuge;

- c. Respondent violated Public Health Law Sections 3304(a) and 3397(1)(d) in that between March 13, 1993 and November 13, 1993, he improperly made or uttered false and/or forged prescriptions in the name of one licensed physician for quantities of Lortab and Ambien and in the name of another licensed physician for Lortab, Chloral Hydrate, Ambien and ASA with codeine;
- d. Respondent violated Public Health Law Sections 3304(a) and 3331(2) in that during the period from December 31, 1993 through January 22, 1994, Respondent improperly issued 12 prescriptions not in good faith and not in the course of his professional medical practice for quantities of Lortab, Chloral Hydrate, Vicodin Tuss, Hycodan and Lomotil;
- e. Respondent violated Public Health Law Section 3304(a) and 10 NYCRR 80.64(a) in that from September 4, 1992 through December 30, 1993, Respondent improperly issued 35 prescriptions for quantities of the controlled substances Lortab, Chloral Hydrate, Ambien, Tylenol with Codeine, Vicodin Tuss, Vicodin tablets, Hycotuss, and Tussionex in that his license to practice medicine had been surrendered.
- f. Respondent was assessed a civil penalty of \$5000, \$2000 of which was suspended contingent upon Respondent's compliance with the terms of the Order. (Ex. 5)

3. Respondent first executed a temporary surrender of his license and registration on or about November 11, 1987 based on his admission that he was incapacitated for the active practice of medicine due to his abuse of the drugs Halcion and Restoril. His license was restored subject to his continued compliance with certain conditions by a Commissioner's Order dated May 13, 1988. (Ex. 3, 4)

4. Respondent executed a second temporary surrender of his license and registration on or about June 27, 1991 based upon his admission that he was incapacitated for the active practice of medicine due to drug abuse. His license was restored subject to his continued compliance with certain conditions pursuant to a Restoration Order dated December 31, 1993. (Ex. 3, 4)

5. Respondent executed a third temporary surrender of his license and registration on or about February 2, 1994 based on his admission that he was incapacitated for the active practice of medicine due to drug abuse. His license remained inactive as of the date of this proceeding. (Ex. 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 Committee concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that Respondent entered into a Stipulation and Order with the New York State Department of Health on or about November 28, 1994 in which he admitted to and the Commissioner made findings of several violations of a Article 33 of the Public Health Law. The Committee voted to sustain the specification of charges set forth in the Department's Statement of Charges (Ex. 1A) pursuant to New York Education Law Section 6530(9)(e) [having been found by the Commissioner of Health to be in violation of Article 33 of the Public Health Law]

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

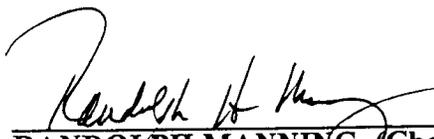
The Committee based its determination primarily on its observation of Respondent's demeanor and a review of his testimony. Respondent presented with a lack of affect, gave brief responses to questions directed to him and clearly appeared incapable of practicing medicine for the foreseeable future. He appeared to lack insight as to the extent his condition prevented him from practicing and could give no clear indication that he had seriously considered any career alternatives if his license was to be revoked. It was also noted that the Respondent testified he had not practiced since approximately 1991. (T. 37) The Committee felt his efforts to remain current in his field had been minimal and that he would require significant re-education before he could be expected to safely practice again. It was believed that efforts to design an effective program of additional medical education would not be practical. Finally, the Committee concluded that Respondent's admitted violations of provisions of Article 33 of the Public Health Law were of such a serious nature that license revocation was justified and was the only appropriate penalty in this case. It was observed that he would have the opportunity to apply for the restoration of his license after one year which could provide a meaningful incentive for him to continue his rehabilitation so as to enable him to demonstrate that his condition had improved to the extent that he could thereafter practice safely.

ORDER

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

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State is **REVOKED**.

DATED: Albany, New York
March 2, 1996



RANDOLPH MANNING, (Chair)

ADRIAN EDWARDS, M.D.
RICHARD N. PIERSON, JR., M.D.

TO: Marcia E. Kaplan, Esq.
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001

Wilfred T. Friedman, Esq.
598 Madison Avenue
New York, New York 10022

Brian Charles Pedersen, M.D.
75 Castle Road
Chappaqua, New York 10514

AR

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

IN THE MATTER
OF
BRIAN CHARLES PEDERSEN, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: BRIAN CHARLES PEDERSEN, M.D.
75 Castle Road
Chappaqua, N.Y. 10514



PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 21st day of December, 1995 at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

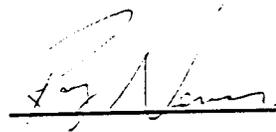
You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers 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.

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: New York, New York
November 16, 1995



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
BRIAN CHARLES PEDERSEN, M.D.

STATEMENT
OF
CHARGES

BRIAN CHARLES PEDERSEN, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 5, 1984, by the issuance of license number 160726 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine. His license has been inactive since on or about February 2, 1994 pursuant to a temporary surrender of license and registration under N.Y. Pub. Health Law Sec. 230(13)(a) (McKinney Supp. 1992). Respondent's license was also inactive pursuant to a temporary surrender of license and registration from on or about November 11, 1987 through on or about May 13, 1988 and from June 27, 1991 through December 31, 1993.

FACTUAL ALLEGATIONS

- A. On or about November 28, 1994, Respondent was found by the commissioner of health to be in violation of article thirty-three of the public health law, as follows:
1. Respondent violated Pub. Health Law Sections 3304(a) and 3397(a)(iii) in that between July 22, 1992 and January 22, 1994, he improperly obtained quantities of controlled substances including Lortab, Chloral Hydrate, Ambien, Tylenol with Codeine #4, Vicodin Tuss, Vicodin, Lomotil, Hycotuss, Tussionex, Hycodan on or about 47 occasions by entering false names

of ultimate users on prescriptions; and

2. Respondent violated Pub. Health Law Sections 3304(a) and 3397(1)(a)(i) in that between March 13, 1993 and November 13, 1993 he improperly obtained 31 prescriptions of two other licensed physicians by the use of fraud, deceit, misrepresentation or subterfuge;
3. Respondent violated Pub. Health Law Sections 3304(a) and 3397(1)(d) in that between March 13, 1993 and November 13, 1993, he improperly made or uttered false and/or forged prescriptions in the name of one licensed physician for quantities of Lortab and Ambien and in the name of another licensed physician for Lortab, Chloral Hydrate, Ambien and ASA with codeine;
4. Respondent violated Pub. Health Law Sections 3304(a) and 3331(2) in that during the period from December 31, 1993 through January 22, 1994, Respondent improperly issued 12 prescriptions not in good faith and not in the course of his professional medical practice for quantities of Lortab, Chloral Hydrate, Vicodin Tuss, Hycodan and Lomotil;
5. Respondent violated Pub. Health Law Section 3304(a) and 10 NYCRR 80.64(a) in that from September 4, 1992 through December 30, 1993, Respondent improperly issued 35 prescriptions for quantities of the controlled substances Lortab, Chloral Hydrate, Ambien, Tylenol with Codeine, Vicodin Tuss, Vicodin tablets, Hycotuss, and Tussionex in that his license to practice medicine had been surrendered.

Respondent was assessed a civil penalty of \$5000,
\$2000 of which was suspended contingent upon
Respondent's compliance with the terms of the Order.

SPECIFICATION OF CHARGES

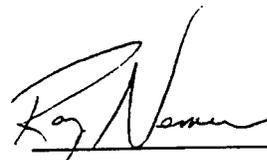
FIRST SPECIFICATION

HAVING BEEN FOUND IN VIOLATION OF
ARTICLE 33 OF THE PUBLIC HEALTH LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(e)(McKinney Supp. 1995) by having been found by the commissioner of health to be in violation of article thirty-three of the public health law as alleged in the facts of the following:

1. Paragraph A.

DATED: November 17, 1995
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct