



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

January 7, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Catherine Anne Eck, P.A.,
A/K/A Caterine Anne Madding, P.A.
300 Cabrillo Street #4
San Francisco, California 94118

Robert Bogan, Esq.
NYS Department of Health
Office of Professional
Medical Conduct
433 River Street, Ste 303
Troy, New York 12180

**RE: In the Matter of Catherine Anne Eck, P.A.
A/K/A Catherine Anne Madding, P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-06) 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.

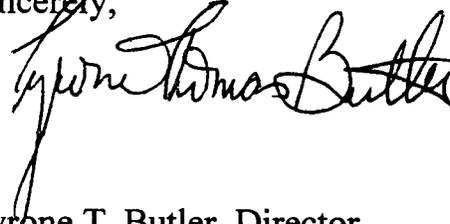
The notice of review served on the Administrative Review Board should be forwarded to:

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 that reads "Tyrone T. Butler". The signature is written in a cursive style with a long, sweeping underline that extends below the name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

COPY

DETERMINATION

AND

ORDER

IN THE MATTER
OF
**CATHERINE ANNE ECK,
P.A.,
a/k/a Catherine Anne Madding, P.A.**

A Notice of Referral Proceeding and Statement of Charges, both dated November 1, 2002, were served upon the Respondent, **CATHERINE ANNE ECK, P.A., A/K/A CATHERINE ANNE MADDING, P.A.** **ELEANOR KANE, M.D.**, Chairperson, **PREKASH C. SAHARIA, M.D.** and **JUDITH GLUSKO, R.N.**, 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 December 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.**, of Counsel. The Respondent did not appear at the hearing in person or by an attorney, but did supply a document that was considered by the Hearing Committee.

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 Section 6530(9)(d), based upon actions allegedly constituting violations of subdivisions (2) and (20). 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. **CATHERINE ANNE ECK, P.A., A/K/A CATHERINE ANNE MADDING, P.A.**, the Respondent, was authorized to practice as a physician assistant in New York State on February 20, 1998, by the issuance of license number 005813 by the New York State Education Department (Ex. 4).
2. On April 24, 2002, the Physician Assistant Committee of the Medical Board of California ("the California Committee") accepted a Stipulation and Waiver agreed to by Respondent and the Executive Officer of the Committee, wherein Respondent agreed that there was a factual and legal basis to impose discipline upon her, based upon a an Accusation filed against her by the Executive Officer alleging that she illegally and fraudulently obtained controlled narcotic, psychotropic and sedative drugs for her own use under cover of her status as a physician's assistant. Pursuant to the Stipulation and Waiver, Respondent agreed to the stayed revocation of her license and 5 years' probation, with various conditions, requirements and restrictions, and the payment of \$1,800.00 in investigative costs (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the California Committee's disciplinary actions against Respondent constitutes misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(d), in that the

conduct would have constituted misconduct under New York Education Law §6530(2)(practicing the profession fraudulently)¹ had it occurred in New York State.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

FIRST 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, as noted above, that Respondent agreed to accept discipline by the California Committee after she was charged with fraudulently obtaining controlled substances for her own use. By having had disciplinary action taken by another state's licensing agency based upon conduct that would have constituted misconduct in New York, had it been committed here, Respondent is guilty of professional misconduct in New York State.

Accordingly, pursuant to Public Health Law Section 230(10)(p), the only issue remaining to be decided is the appropriate penalty to be imposed in this state. The Hearing Committee was hampered somewhat in its efforts to determine the appropriate penalty by

¹ The Hearing Committee finds no basis in the California Order or Stipulation to support a finding of moral unfitness to practice medicine, as charged by the Department.

Respondent's failure to personally attend the hearing, and the dearth of documentation presented on her behalf relating to her current situation and compliance with the terms of her probation, such as the results of the psychological evaluation required by the Stipulation, documentation as to her participation in a diversion program, the results of bodily fluid testing, etc. A letter from Respondent to the Chief Administrative Law Judge admitted into evidence at the hearing (Ex. A) makes various claims as to these matters, but this letter is not a good substitute for Respondent's personal attendance at the hearing and presentation of third party documentation as to her efforts to effectuate rehabilitation.

The Hearing Committee has no reason to disbelieve Respondent's representations as to her current status, but it would not be appropriate to base a decision as to whether or not it would be safe for Respondent to practice in New York solely upon her own statements, which are not subject to cross-examination. Although the Hearing Committee is not inclined to revoke Respondent's license, it does not feel that it could, on the limited evidence presented, endorse Respondent's practice in New York at this time. The California Committee is in a much better position to monitor Respondent's status and progress than is this Board. Accordingly, the Hearing Committee concludes that the appropriate penalty in this case, given the seriousness and nature of the conduct which led to the California Order, is a suspension of Respondent's New York license for 5 years, which suspension will be stayed upon receipt by the Board of acceptable verification that she has successfully completed, or been relieved of, her California probation. Respondent is also placed on 5 years probation in New York State. The terms of probation are detailed in the attached Order.

ORDER

IT IS HEREBY ORDERED THAT:

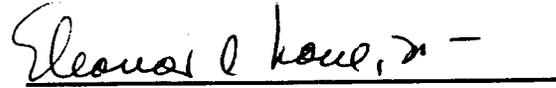
1. The New York physician's assistant license of **CATHERINE ANNE ECK, P.A., A/K/A CATHERINE ANNE MADDING, P.A.**, is hereby **SUSPENDED** for a period of **FIVE (5) YEARS**. The suspension will be stayed upon receipt by the Board of acceptable verification that she has successfully completed, or been relieved of, her California probation (and subject to Respondent's compliance with the terms of probation set forth below). Such notification should be sent to the Board, addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299.
2. OPMC will monitor Respondent's completion of a **FIVE (5) YEAR PROBATIONARY PERIOD**, to commence upon the effective date of this Order. The terms of probation are set forth below.
3. If, at some future date, the Respondent chooses to resume practice in New York, Respondent must provide thirty (30) days prior written notice concerning her intention, by registered or certified mail, return receipt requested, to OPMC at the address listed above. 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.
4. The terms of Respondent's probation are as follows:

- A). During the period of probation set forth above, Respondent shall remain drug and alcohol free, except for drugs prescribed for Respondent by another physician for legitimate medical purposes.
- B). For any portion of Respondent's New York probation during which she is actually on probation supervised by, or subject to conditions on his license by, the State of California, Respondent shall comply in full with all such terms and conditions. Respondent shall provide a copy of this Decision and Order to the California Committee and take steps to ensure that the California Committee or its designee provides OPMC with at least quarterly reports outlining Respondent's compliance with any such terms and conditions, and immediate notification should Respondent violate any material term or condition.
- C). Should Respondent return to New York to practice during the period of her New York probation, she 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.
- D). The New York 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.
- E). Should Respondent return to New York to practice, she shall notify in writing any group, clinic or medical facility with whom she becomes affiliated or at which she 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.
- F). 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 she is affiliated or at which she 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 physicians. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of her 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.

- G). 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;
- H). Should Respondent return to New York to practice, she shall notify the Director of OPMC, in writing, if she 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 thereafter tolled while she is not practicing in New York during such period and shall resume upon her return to practice in New York State.
- I). Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by her profession. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- J). Respondent shall comply with all terms, conditions, and restrictions to which she is subject pursuant to the Order and shall assume and bear all costs related to compliance.
- K). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician's assistant in New York State; provided, however, that on receipt of evidence of material non-compliance or material violation of the term(s) and condition(s) of probation, the stay of the suspension of Respondent's license may be lifted, or 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.
- L). OPMC may, in its discretion, and upon request by Respondent, relieve her 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: Rhinebeck, New York
2 Jan, 2003

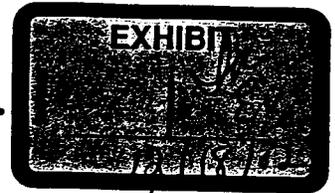


ELEANOR KANE, M.D.
Chairperson

PREKASH C. SAHARIA, M.D.
JUDITH GLUSKO, R.N.

APPENDIX 1

ORIGINAL



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

IN THE MATTER

NOTICE OF

OF

REFERRAL

CATHERINE ANNE ECK, P.A.

PROCEEDING

aka

CATHERINE ANNE MADDING, P.A.

CO-02-09-4531-A

TO: CATHERINE ANNE ECK, P.A., aka CATHERINE ANNE MADDING, P.A.
300 Cabrillo Street #4
San Francisco, CA 94118

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 18th day of December 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 December 9, 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 December 9, 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

November 1, 2002



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
CATHERINE ANNE ECK, P.A.
aka
CATHERINE ANNE MADDING, P.A.
CO-02-09-4531-A

STATEMENT
OF
CHARGES

CATHERINE ANNE ECK, P.A., aka CATHERINE ANNE MADDING, P.A., the Respondent, was authorized to practice medicine as a Physician Assistant in New York state on February 27, 1997, by the issuance of license number 005813 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 24, 2002, the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs, (hereinafter "California Board"), by a Decision and Order, (hereinafter "California Order"), revoked Respondent's license to practice medicine, as a Physician Assistant, stayed the revocation, placed her on five (5) years probation with terms and conditions, and required her to pay \$1,800.00 costs of investigation, based on obtaining controlled substances by deceit and making false statements in an order or report in order to obtain controlled substances for herself.

B. The conduct resulting in the California Board 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 (2) (practicing the profession fraudulently);
and/or
2. New York Education Law §6530 (20) (moral unfitness).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having her license to practice medicine as a physician assistant revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation or other disciplinary action 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.

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


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