



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

REISSUE

REISSUE

REISSUE

February 1, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PUBLIC

Annette Winter, M.D.
15 Orient Court
Ridge, New York 11961-1632

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street - 4th Floor
Troy, New York 12180

Annette Winter, M.D.
Windsor Court Apartments
Unit 311
470 Memorial Drive
Chicopee, Massachusetts 01020

RE: In the Matter of Annette Winter, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-22) of the Hearing Committee in the above referenced matter. **A copy of this decision was sent out on January 31, 2005 with the incorrect Appendix I attached. Please discard the January 31, 2005 copy and replace with the attached decision.** 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 "Sean D. O'Brien". The signature is written in a cursive style with a large initial "S" and "D".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC #05-22

IN THE MATTER

OF

ANNETTE WINTER, M.D.

A hearing was held on January 19, 2005, at the offices of the New York State Department of Health ("the Petitioner") regarding a Notice of Referral Proceeding and a Statement of Charges, both dated December 2, 2004, for the Respondent, **Annette Winter, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Michael R. Golding, M.D.**, Chairperson, **Alexander M. Yvars, M.D., F.A.C.S.**, and **Mr. Thomas W. King, Jr., M.P.A., P.E.**, 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 **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing either in person or by 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)(b) and (d). 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: 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.

1. Annette Winter, M.D., the Respondent, was authorized to practice medicine in New York State on July 3, 1989, by the issuance of license number 178819 by the New York State Education Department (Petitioner's Ex. 7).

2. On November 17, 2004, the Massachusetts Board of Registration in Medicine ("Massachusetts Board"), by a Final Decision and Order, indefinitely suspended the Respondent's right to renew her license to practice medicine, based on her practice of medicine while her ability to do so was impaired by mental disability.

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to New York Education Law Section 6530(7) - "Practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability..."

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 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 Section 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..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing. The Administrative Law Judge ruled that the Petitioner's attempts to serve the Notice of Referral Proceeding and the Statement of Charges on the Respondent met the requirements of law pursuant to Public

Health Law Section 230.10(d) and that, therefore, the hearing could proceed on the merits despite the Respondent's absence.

Petitioner's Ex. 8 is the Final Decision and Order of the Massachusetts Board. This document lists several acts of delusional behavior by the Respondent including an accusation that her telephone had been tapped by a person who did not know her and a request by the Respondent that this person be shot. She wrote a letter in April 2003 in which she stated that this person was a complete stranger to her but had, nonetheless, listened to her private conversations for two years. The Massachusetts Board concluded that the Respondent was "practicing medicine while her ability to practice was impaired by mental instability." (Petitioner's Ex. 8). This Hearing Committee concludes that the Respondent' conduct, had it occurred in New York State, would have constituted professional misconduct under New York State Education Law Section 6530(7), which defines professional misconduct as practicing medicine while impaired by mental disability.

The Petitioner recommended that this Hearing Committee revoke the Respondent's license to practice medicine in New York State. We decline to do so because of information contained in the Petitioner's exhibits pertaining to service of the Notice of Referral Proceeding and the Statement of Charges on the Respondent. As the Administrative Law Judge ruled during the hearing, the Petitioner's efforts to serve the Respondent met the requirements of law and, therefore, the hearing could proceed in her absence. However, there is reason to believe that the Respondent, nonetheless, may not have received these documents. Also, there is reason to believe that even if she did receive these documents, she may have been in a mental health crisis at that time that compromised her ability to respond competently. Under such circumstances, a revocation of her license would be an unjustifiably severe sanction.

The Petitioner attempted without success to serve the Notice of Referral Proceeding and the Statement of Charges on the Respondent in person at the two most recent addresses it had for her – 15 Orient Court, Ridge, New York, and 470 Memorial Drive, Chicopee, Massachusetts (Petitioner's Ex. 5 and 5[a]). The Petitioner also sent these documents to the Respondent at both addresses by certified and first class mail on December 6, 2004 (Petitioner's Ex. 6).

Keith Swensen, the person who attempted to serve the papers on the Respondent at 15 Orient Court, wrote in his affidavit of service, "Attempted service 12/9 @ 7:40 am. According to relative of defendant she moved to an unknown location." (Petitioner's Ex. 5[a]). According to an affidavit written by Christopher Morley, a Supervising Medical Conduct Investigator employed by the Petitioner, on January 18, 2004, he spoke to the Respondent's mother, a resident of 15 Orient Court. The Respondent's mother told Mr. Morley that "she did not know the whereabouts of her daughter." (Petitioner's Ex. 9). Given this information, it is doubtful that the Notice of Referral Proceeding and Statement of Charges sent to the Respondent at 15 Orient Court by certified and first class mail ever reached the Respondent.

David Tenney, the person who attempted to serve the papers on the Respondent at 470 Memorial Drive, wrote in an affidavit of service dated December 8, 2004, "Defendant in hospital indefinitely with long-term illness." (Petitioner's Ex. 5). Mr. Morley wrote in his affidavit that on January 18, 2005, he spoke to the apartment manager at 470 Memorial Drive. Mr. Morley stated:

The manager stated that Dr. Winter no longer resides there. The manager stated that the Chicopee Police Department responded in November of 2004 to a suicide attempt by Dr. Winter and sent her to a hospital. The manager did not know the name of the hospital. (Petitioner's Ex. 5).

Mr. Morley wrote that subsequent attempts to learn the name of the hospital to which the Respondent was taken proved unsuccessful. Given these facts, it is a very real possibility that the Respondent did not receive the Notice of Referral Proceeding and the Statement of Charges that were sent by certified and first class mail to her at 470 Memorial Drive on December 6, 2004. If these papers did reach her, it is unknown whether the circumstances leading to her November 2004 suicide attempt rendered her constructively unable to respond in any effective manner.

Taking all these problems into account, the Hearing Committee has decided that the Respondent's license should not be revoked. The Hearing Committee would like to suspend the Respondent's license until she appears for a hearing and convinces this Hearing Committee or another Hearing Committee to be convened in the future that she is mentally competent to practice medicine. However, such an indefinite suspension of a physician's license is prohibited by Public Health Law Section 230-a(2). Therefore, the Hearing Committee will impose the penalty available to it under the law that comes closest to accomplishing what such an indefinite suspension would accomplish. The Respondent's license will be suspended for one year. If, toward the end of that year, the Petitioner concludes that the Respondent should not resume the practice of medicine in New York State, it can commence new disciplinary proceedings against her.

It is recognized that this approach increases the workload of the Petitioner's staff. However, the Hearing Committee believes that a one-year suspension is the only penalty available under the law that equitably balances protection of the public and the rights of the Respondent. It may not be the ideal solution to the problems presented by this case, but it is the best solution among the penalties available under the law.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is suspended for one year.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: New York, New York

27 January, 2005

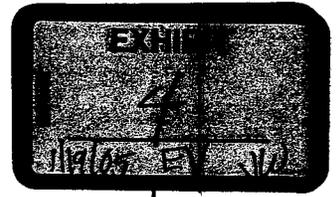


**Michael R. Golding, M.D.
Chairperson**

**Alexander M. Yvars, M.D., F.A.C.S.
Thomas W. King, Jr., M.P.A., P.E.**

APPENDIX I

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



ORIGINAL

IN THE MATTER
OF
ANNETTE WINTER, M.D.
CO-03-07-3190-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ANNETTE WINTER, M.D.
Windsor Court Apartments
Unit 311
470 Memorial Drive
Chicopee, MA 01020

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 19th day of January 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 5th Floor, 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. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before January 10, 2005.

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 January 10, 2005, 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

Dec. 2, 2004



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
ANNETTE WINTER, M.D.
CO-03-07-3190-A

STATEMENT
OF
CHARGES

ANNETTE WINTER, M.D., the Respondent, was authorized to practice medicine in New York state on June 7, 1989, by the issuance of license number 178819 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 7, 2004, the Commonwealth of Massachusetts, Board of Registration in Medicine, (hereinafter "Massachusetts Board"), by a Final Decision and Order, (hereinafter "Massachusetts Order") indefinitely suspended Respondent's right to renew her license to practice medicine, based on practicing medicine while her ability to do so was impaired by mental instability.

B. The conduct resulting in the Massachusetts 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(7) (practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability).

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 New York state, in that Petitioner charges:

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

DATED: *Dec. 2*, 2004
Albany, New York


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