



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner  
Paula Wilson  
Executive Deputy Commissioner

August 18, 1994

RECEIVED  
AUG 19 1994  
MEDICAL CONDUCT

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Thomas F. Moran, M.D.  
26 Evergreen Way  
North Tarrytown, New York 10591-1119

Kevin Donovan, Esq.  
NYS Department of Health  
Empire State Plaza  
Corning Tower - Room 2438  
Albany, New York 12237-0032

Barry A. Gold, Esq.  
Thuillez, Ford, Gold & Conolly  
90 State Street, Suite 1500  
Albany, New York 12207-1715

**RE: In the Matter of ~~Thomas F. Moran~~ F. Moran, M.D.**

Dear Dr. Moran, Mr. Gold and Mr. Donovan :

Enclosed please find the Determination and Order (No. 94-67) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Empire State Plaza  
Corning Tower, Room 438  
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

*Tyrone T. Butler/mm*

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER  
OF  
THOMAS F. MORAN, M.D.**

**ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER  
ARB 94-67**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**<sup>1</sup> held deliberations on July 15, 1994 to review the Hearing Committee on Professional Medical Conduct's May 10, 1994 Determination finding Dr. Thomas Moran guilty of professional misconduct. Both the Office of Professional Medical Conduct (Petitioner) and Dr. Moran (Respondent) requested the review through notices which the Board received on May 19, 1994 and May 25, 1994. James F. Horan served as Administrative Officer to the Review Board. Kevin J. Donovan, Esq. submitted a brief on the Petitioner's behalf on June 27, 1994 and submitted a reply brief on July 6, 1994. Barry A. Gold submitted a brief on the Respondent's behalf on June 29, 1994 and a reply brief on July 5, 1994.

**SCOPE OF REVIEW**

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties

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<sup>1</sup> Robert Briber and Sumner Shapiro did not take part in the deliberations.

permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

### **HEARING COMMITTEE DETERMINATION**

The Petitioner brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i) , which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee found that the State of Michigan's Board of Medicine determined in 1992 that the Respondent suffered from a mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice medicine in a safe and effective manner. The Michigan Board also found that the Respondent failed to comply with a written order to submit to a physical or mental examination. The Michigan Board made further findings that the Respondent had a condition that involved seizures and an additional disorder . The Michigan Board suspended the Respondent's license to practice medicine in Michigan for six months and one day, with a provision that the Respondent could not return to practice in Michigan without providing clear and convincing proof that he is mentally and physically able to practice medicine with reasonable skill and safety.

The Hearing Committee heard testimony from the Respondent, from Dr. Rowan, a neurologist who treated the Respondent, and from Dr. Katz, a psychiatrist, who treated the Respondent, concerning the Respondent's medical and mental condition. The Committee concluded that the Respondent had been disciplined in Michigan for a behavior disorder which manifested itself

by rudeness, vulgarity, poor judgement and other inappropriate behavior toward his patients. The Committee determined that the Respondent should be limited to those activities where he would have no direct patient care responsibilities or contact. The Committee also concluded that the Respondent should engage in an ongoing treatment relationship with both a neurologist and a psychiatrist, because the Respondent suffers from both a personality disorder and complex partial epilepsy. The Committee found that the Respondent's epilepsy is poorly controlled.

The Hearing Committee placed the Respondent on three years suspension, stayed the suspension and placed the Respondent on probation. The terms of probation require that the Respondent shall not provide direct patient care or have direct patient contact and shall undergo treatment in an ongoing basis with a neurologist and a psychiatrist.

#### **REQUESTS FOR REVIEW**

The Petitioner has asked the Review Board to modify the penalty in this case, because the Hearing Committee's penalty does not adequately protect the public. The Petitioner notes that both Dr. Rowan and Dr. Katz, who testified at the hearing, recommended limitations on the Respondent's license and that the Michigan Board noted that all health officials who expressed an opinion about Dr. Moran recommended that the Respondent should not be treating patients. The Petitioner requests that the Review Board revoke the Respondent's license or that the Review Board make the limitations on the Respondent's license permanent. The Petitioner notes that the Hearing Committee did not specify the period during which the Respondent would be on probation.

The Respondent states that the issue on appeal is whether there is room in clinical medicine for an internist with epilepsy and a related psychiatric disorder. The Respondent argues that the penalty restricting him from direct patient care or contact is excessive and unwarranted. The Respondent argues that Dr. Rowan and Dr. Katz both believed that the Respondent could practice medicine under the proper practice setting and environment. The Respondent argues that Dr. Moran is not a danger to his patients and that Dr. Rowan's and Dr. Katz's suggestions for a proper working environment for the Respondent would constitute a proper and reasonable resolution of this case.

## REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board votes to sustain the Hearing Committee's Determination finding Dr. Moran guilty of professional misconduct. The Determination was consistent with the Committee's finding and conclusions that the Respondent had been found guilty of misconduct in the State of Michigan.

The Review votes 3-0 to overturn the Hearing Committee's Determination placing the Respondent on probation and restricting him to those activities in which he will have no direct patient care responsibilities or any direct patient contact. We find that the restriction on the Respondent's patient care and patient contact responsibilities are appropriate, in view the Committee's findings and conclusions, but we feel that those restrictions should be permanent. The Review Board votes to limit the Respondent's license to prohibit Dr. Moran from patient contact and patient care responsibilities, including decision making regarding individual patient care.

We agree with the Hearing Committee that the Respondent can not engage in the clinical practice of medicine. The Michigan Board found that the Respondent suffered from a behavior disorder which manifested itself by rudeness, vulgarity, poor judgement and other inappropriate behavior toward his patients. Both the Respondent's experts, Drs. Rowan and Katz testified that the Respondent should not have an unrestricted license. The Committee found that Dr. Rowan's recommendations concerning limitations on the Respondent's license included:

- he may not function as a surgeon;
- he must have a regular and predictable schedule;
- his work must not involve driving an automobile;
- his work should not involve any situation that could cause sleep deprivation;
- he should not be on call for nights or weekends.

Dr. Katz's recommendations included:

- Respondent should work in a structured setting;

- Respondent should not work in an emergency room;
- If Respondent were to see patients, it should be on an intermittent basis where he would see people on "sick call";
- Respondent should not have total responsibility for a patient as a primary care physician;
- Respondent should work under supervision.
- Respondent should not have an ongoing relationship with a patient as that can cause interpersonal stress.

The limitations set out in the recommendations by Drs. Rowan and Katz address most if not all the components of patient care; the Respondent should not perform surgery or work in an emergency room, the Respondent should not have total responsibility for a patient, the Respondent should not have an ongoing relationship with a patient, Respondent should not be on call for nights or weekends, Respondent should have a regular and predictable schedule. The Respondent contends that the Rowan and Katz recommendations would define the working environment to allow the respondent to continue in clinical practice. The Review Board finds, however, that the Rowan and Katz recommendations indicate that the Respondent is not capable of clinical practice.

While the Review Board agrees with the hearing Committee's conclusion that the Respondent should be prohibited from providing patient care, we do not agree that the prohibition should be part of a condition of probation. There is no indication from the expert testimony that the Respondent's condition will improve over the course of time or of treatment. Since the Respondent's condition would seem likely to be permanent, the Review Board finds that the limitation on the respondent's license should be permanent. The Review Board, therefore, votes to restrict the Respondent's license as we have stated above.

**ORDER**

**NOW**, based upon this Determination, the Review Board issues the following

**ORDER:**

1. The Review Board votes 3-0 to sustain the Hearing Committee's Determination that Dr. Thomas F. Moran was guilty of professional misconduct.
  
2. The Review Board votes 3-0 to overrule the Hearing Committee's penalty in this case.
  
3. The Review Board votes 3-0 to limit Dr. Moran's license to prohibit Dr. Moran from patient contact and patient care responsibilities, including decision making regarding individual patient care.

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

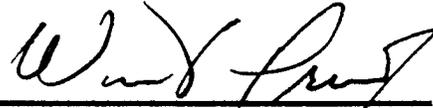
**WILLIAM B. STEWART, M.D.**

**IN THE MATTER OF THOMAS F. MORAN, M.D.**

**WINSTON S. PRICE, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Moran.

DATED: Brooklyn, New York

\_\_\_\_\_, 1994

A handwritten signature in cursive script, appearing to read "Winston S. Price", written over a horizontal line.

**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF THOMAS F. MORAN, M.D.**

**EDWARD C. SINNOTT, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Moran.

**DATED: Albany, New York**

*July 20*, 1994

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott, M.D.", written over a horizontal line.

**EDWARD C. SINNOTT, M.D.**

**IN THE MATTER OF THOMAS F. MORAN, M.D.**

**WILLIAM A. STEWART, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Moran.

**DATED: Albany, New York**

20 July, 1994

*William A. Stewart*

**WILLIAM A. STEWART, M.D.**



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.  
*Commissioner*

Paula Wilson  
*Executive Deputy Commissioner*

May 10, 1994

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Kevin Donovan, Esq.  
Associate Counsel  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 2438  
Albany, New York 12237-0032

Barry A. Gold, Esq.  
Thuillez, Ford, Gold & Conolly  
90 State Street, Suite 1500  
Albany, New York 12207-1715

Thomas F. Moran, M.D.  
26 Evergreen Way  
North Tarrytown, New York 10591-1119

**RE: In the Matter of Thomas F. Moran, M.D.**

Dear Mr. Donovan, Mr. Gold and Dr. Moran:

Enclosed please find the Determination and Order (No. BPMC 94-67) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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 than 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), "(t)he 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  
Corning Tower - Room 2503  
Empire State Plaza  
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.

Very truly yours,

*Tyrone T. Butler / TTB*

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mn  
Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
OF :  
THOMAS F. MORAN, M.D. : ORDER  
-----X  
NO. BPMC-94-67

A Notice of Hearing and Statement of Charges, both dated September 16, 1993, were served upon the Respondent, Thomas F. Moran, M.D. ARTHUR ZITRIN, M.D. (Chair), CAROLYN C. SNIPE, and JOHN P. FRAZER, 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. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Kevin P. Donovan, Esq., Associate Counsel. The Respondent appeared by Thuillez, Ford, Gold & Conolly, Barry A. Gold, Esq., of Counsel. Hearings were held on January 21, 1994 and March 18, 1994. 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 §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 §6530(9)(b) and (d). 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 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. Thomas F. Moran, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on August 14, 1981, by the issuance of license number 147366 by the New York

State Education Department. The Respondent is registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 at 26 Evergreen Way, North Tarrytown, New York 10591. (Pet. Ex. #2).

2. By an Order of the Board of Medicine of the State of Michigan (hereinafter "Michigan Board") dated June 1, 1992, Respondent was found to have been in violation of Michigan Public Health Code §16221(b)(iii) by having a mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner. The Michigan Board also found Respondent in violation of Michigan Public Health Code §16221(g) by failing to comply with a written order to submit to a mental or physical examination. Respondent's license to practice medicine in Michigan was suspended for a period of six months and one day, with the proviso that reinstatement could take place only upon application and the presentation of proof, by clear and convincing evidence, that he is of good moral character, is mentally and physically able to practice the profession with reasonable skill and safety, and that it is in the public interest for Respondent to resume practice. (Pet Ex. #3).

3. The Michigan Board held a hearing on March 9, 1992. Respondent failed to appear at the hearing. The Michigan Board found evidence of twelve complaints by various patients treated by Respondent at Blue Care Network, a health maintenance organization (HMO). The complaints involved behavior on Respondent's part including rudeness, vulgarity, poor judgment

and other inappropriate behavior. (Pet. Ex. #3).

4. The Michigan Board also made findings regarding numerous reports by health care providers who treated or evaluated Respondent. More specifically, the Board including the reports of a neurologist, a psychiatrist, a neuropsychologist and two psychologists. The Michigan Board found that "All the reports quoted above seem to agree that Dr. Moran's problem is not just with seizures. He has an additional disorder that is present even when he is not having seizures. It's unclear what the additional disorder is or whether the disorder is emotional or neurological. Those who express an opinion on Dr. Moran's fitness to practice medicine seem to agree that he should not be treating patients." (Pet. Ex. #3, pp.12-24).

5. A. James Rowan, M.D., a neurologist with experience in the treatment of epilepsy, testified on behalf of Respondent. Dr. Rowan testified that he saw Respondent during six office visits between 1986 and 1993. Respondent also telephoned Dr. Rowan periodically, but those contacts are not noted in Dr. Rowan's office records. He testified that such contacts generally related to Respondent's attempts to find employment. (19, 23-24, 37; Pet. Ex. #5, pp. 1-10).

6. Dr. Rowan further testified that Respondent has complex partial epilepsy characterized by intermittent seizures that consist of alteration of consciousness and automatic motor activity, followed by a confusional state. The confusional state can last up to fifty or sixty minutes and can include walking around, talking, and purposeless activity. In the post-seizure

state, Respondent may demonstrate impaired judgment, as consciousness is clouded even after the seizure has ceased. Dr. Rowan further testified that Respondent does not always know when he has had a seizure. (25, 29, 40, 62-64, 66; Pet. Ex. #5, p. 2).

7. Dr. Rowan further testified that Respondent's epilepsy is not well controlled, despite the fact the he is taking Tegretol, an anti-seizure medication. In Dr. Rowan's opinion, Respondent's condition is not likely to either improve or deteriorate. Dr. Rowan also diagnosed Respondent as having a personality disorder, but would not opine as to whether that would prevent Respondent from practicing medicine. (34, 38, 45-46, 102).

8. In Dr. Rowan's opinion, Respondent should not have an unrestricted license to practice medicine. Dr. Rowan recommended the following limitations on Respondent's license:

- he may not function as a surgeon;
- he must have a regular and predictable schedule;
- his work must not involve driving an automobile;
- his work should not involve any situation that could cause sleep deprivation;
- he should not be on call for nights or weekends.

(29-30, 53-56).

9. It became clear that Dr. Rowan and Respondent did not have a complete physician-patient relationship. Respondent was not seen by Dr. Rowan for regular appointments - Dr. Rowan would not see Respondent for a while, until Respondent would "show up".

In the eight years between his initial visit and his testimony, Dr. Rowan saw Respondent during two office visits in 1986, one in 1987, one in 1989, one in 1992 and one in 1993. Dr. Rowan admitted that he never performed a full physical examination of Respondent and not taken a complete history. He acknowledged that he never assessed Respondent's memory and could not comment on whether Respondent's abilities may have diminished over the years. (76, 78, 81, 85-86, 92, 97; Pet. Ex. #5).

10. Dr. Rowan noted the necessity of examining blood levels of Tegretol to assure that an appropriate level of the drug was in the system. However, during the eight years that Dr. Rowan has seen Respondent, only one laboratory report on Respondent's Tegretol levels was recorded. (28; Pet. Ex. #5, p. 11).

11. Steven E. Katz, M.D., a psychiatrist, testified on behalf of Respondent. Dr. Katz is board-certified in psychiatry and is a former Commissioner of the New York State Office of Mental Health. Dr. Katz was formerly the Executive Vice-Chairman of the Department of Psychiatry, New York University Medical Center, and Medical Director at Tisch Hospital, New York University Medical Center. (Resp. Ex. B).

12. Dr. Katz first saw Respondent in late 1986 during a consultation for Dr. Rowan, and then saw him once again in early 1987. Dr. Katz did not see Respondent again until January, 1993, although he called Dr. Katz approximately three to four times a year in the interim. The phone calls generally involved requests for assistance in locating employment. (113-114, 117-119).

13. Dr. Katz testified that when he first saw Respondent, he

exhibited stubbornness, poor judgment, and little understanding as to why he had been referred to a psychiatrist. He indicated that Respondent believed that he did not need to see a psychiatrist on a regular basis and did not agree to see Dr. Katz on a regular basis at that time. (113-114, 156-158).

14. Dr. Katz testified that he diagnosed Respondent as having a personality disorder. This is defined in the DSM-IIIR as personality traits that are inflexible and maladaptive, and which cause significant social or occupational impairment or subjective distress. (153-154).

15. Respondent telephoned Dr. Katz during the summer of 1992 when he underwent a psychiatric hospitalization at Erie County Medical Center. He asked Dr. Katz to help him get out of the hospital. Respondent was eventually released from the hospital, through the efforts of Respondent's father. He was transferred to a facility in Westchester County for an additional three week hospitalization. (114-115).

16. Following his discharge, Respondent began seeing Dr. Katz in his office, beginning on January 19, 1993. Dr. Katz saw Respondent approximately once every four to five weeks, mostly for supportive psychiatric therapy related to helping Respondent obtain a job. (118).

17. Dr. Katz recommended that Respondent not have an unrestricted license to practice medicine due to his ongoing psychological problems. He recommended the following limitations on Respondent's license:

- Respondent should work in a structured setting;

- Respondent should not work in an emergency room;
- If Respondent were to see patients, it should be on an intermittent basis where he would see people on "sick call";
- Respondent should not have total responsibility for a patient as a primary care physician;
- Respondent should work under supervision;
- Respondent should not have an ongoing relationship with a patient as that can cause interpersonal stress.

(122-123, 137, 139-140).

18. Thomas Moran, Esq., Respondent's father, testified on behalf of Respondent. Mr. Moran is an attorney and represented Respondent during the Michigan Board's disciplinary proceeding. He testified that he advised his son not to undergo the psychiatric examination ordered by the Michigan Board. He claimed that this advice was based on the opinion of Michael L. Zarr, M.D., a psychiatrist. A letter dated December 8, 1993, purportedly written by Dr. Zarr was placed into evidence by Respondent. Mr. Moran testified that it contained the same advice given to Mr. Moran by Dr. Zarr prior to the 1992 Michigan disciplinary action. (245, 247-248, 251-252, 259, 263; Resp. Ex. C).

19. A review of Dr. Zarr's letter revealed that at no point does he state that he advised Respondent not to undergo the psychiatric evaluation. The letter makes clear that his questioning of psychiatric evaluations is a personal, rather than professional opinion. (Resp. Ex. C).

20. Respondent experienced a seizure during the course of the hearing held on January 21, 1994. The seizure and the

following confusional state lasted for at least one-half hour, requiring the hearing to be adjourned, and completed on March 18, 1994. (141-144).

21. Respondent testified that his seizures are triggered by long distance travel, sleep deprivation, and stress. He acknowledged that stressful situations include starting a new job, undergoing interviews, meeting new people and travel to new places. Respondent also testified that his control of seizures has not been good and that he does not know when he has had a seizure. (185 219).

22. Respondent testified that he underwent three years of post-graduate medical training. The first year of training occurred at a facility in Towson, Maryland. Respondent stated that he left that program due to transportation problems related to epilepsy. His second year was completed at a facility in Connecticut, but the Connecticut hospital did not select him for the third year. As a result, Respondent stated that he completed his third year of post-graduate training at a hospital in Pennsylvania. (177, 192).

23. Respondent denied that he rejected treatment recommendations made by Dr. Katz in 1986-1987. However, Dr. Katz testified that he urged Respondent to engage in a therapeutic relationship at that time but Respondent refused. (156-158, 232).

24. In 1992, Respondent was admitted to the psychiatric ward of Erie County Medical Center. He testified that the hospitalization occurred after he called an ambulance because he

was concerned about how he would wander about and perhaps fall off the balcony in his eighth floor apartment. (187-188).

25. Respondent testified that he agrees with Dr. Katz's diagnosis of a personality disorder, but had not discussed the transfer of his care to another psychiatrist even though Dr. Katz has moved to Maine. Respondent testified that there is nothing in his life now that would require the support of a therapeutic relationship. (191, 243).

26. Respondent insisted that his employment problems were due to the fact that he has epilepsy. He denied that he was discharged by Blue Care Network due to any behavioral problems. However, a letter to Respondent dated June 14, 1989 from James E. Packer, M.D., Corporate Medical Director for Blue Care confirms that Respondent's termination was due to his behavior and was not related to his physical condition. (199-200; Pet. Ex. #6).

27. Respondent was last employed as a physician at Cumberland Correctional Facility, in Mount Morris, New York. His employment lasted for one day in July, 1992. (187, 193).

#### 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 Department alleged two specifications of professional misconduct against Respondent, arising out of the prior disciplinary action by the Michigan Board. The Hearing Committee concluded that the Department had sustained its burden of proof with regard to these allegations. The preponderance of the

evidence demonstrates that the Michigan Board suspended Respondent's license to practice medicine in that state following an adjudicatory hearing. In an Order dated June 1, 1992, the Michigan Board found that Respondent failed to comply with a written order to submit to a psychiatric examination. The Board also found that Respondent had a mental or physical inability to practice in a safe and competent manner. Respondent failed to appear at the Michigan hearing and did not defend himself against the charges.

The Hearing Committee further concluded that Respondent's conduct would, if committed in New York State, constitute professional misconduct under the laws of New York. More specifically, his conduct would constitute a failure to comply with an order to submit to a medical or psychiatric examination in violation of Public Health Law §230(7) and New York Education Law §6530(15). In addition, Respondent conduct would constitute having a psychiatric condition which impairs the licensee's ability to practice the profession, in violation of Education Law §6530(8). As a result, the Hearing Committee voted to sustain the First and Second Specifications of professional misconduct.

#### 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 suspended for a period of three years. The suspension shall be stayed, and Respondent placed on probation. The

complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein. 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.

Both Dr. Rowan and Dr. Katz expressed the opinion that Respondent could safely practice medicine, with certain limitations. They recommended that Respondent not have total responsibility for patients as a primary care physician, and that he work in a structured setting, under direct supervision. They also recommended that he not work in an emergency room or have on-call duties, and that he should avoid sleep deprivation.

The Hearing Committee agreed that revocation was not warranted. However, the limitations proposed by Drs. Rowan and Katz would be unenforceable in any meaningful way, were Respondent to engage in the clinical practice of medicine. Further, these limitations would place an undue administrative burden on any prospective employer as well as upon the Office of Professional Medical Conduct.

The record established that Respondent was disciplined in Michigan for a behavior disorder which manifested itself by rudeness, vulgarity, poor judgment and other inappropriate behavior toward his patients. As a result, it was the unanimous determination of the Hearing Committee that Respondent's practice should be limited to those activities where he would have no direct patient care responsibilities or any direct patient

contact.

The Hearing Committee further determined that Respondent should engage in ongoing treatment relationships with both a neurologist and a psychiatrist. The evidence demonstrated that Respondent is suffering from a personality disorder which was the direct cause of the prior disciplinary action in Michigan. Although Respondent began regular treatment with Dr. Katz in January 1993, that treatment ended when Dr. Katz recently moved to Maine. Despite the fact that Dr. Katz believes that Respondent requires ongoing psychiatric treatment, Respondent testified that he does not need the support of a therapeutic relationship with another psychiatrist at this time.

Respondent is also suffering from complex partial epilepsy. Although Respondent is taking Tegretol for this condition, it is apparent that his epilepsy is poorly controlled. Moreover, Respondent is not being treated by a neurologist for epilepsy on a regular basis. Dr. Rowan's testimony clearly demonstrated that he had seen Respondent on an intermittent basis and was not monitoring the effectiveness of the Tegretol. It was the unanimous consensus of the Hearing Committee that Respondent's condition warrants continued treatment for both his neurologic and psychiatric conditions.

The Hearing Committee believes that the limitations described above, and which are more fully set forth in the terms of probation, strike the appropriate balance between Respondent's desire to practice medicine and the Board's responsibility to protect the people of New York State.

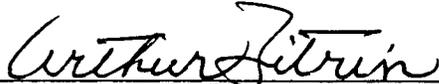
ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges are SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is SUSPENDED for a period of THREE YEARS from the effective date of this Determination and Order. The suspension shall be stayed, and Respondent placed on probation. The complete terms of probation are contained in Appendix II which is attached to this Determination and Order and incorporated herein.

DATED: Albany, New York  
2 MAY, 1994

  
ARTHUR ZITRIN, M.D. (CHAIR)

CAROLYN C. SNIPE  
JOHN P. FRAZER, M.D.

TO: Kevin P. Donovan, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower Building - Room 2429  
Empire State Plaza  
Albany, New York 12237

Barry A. Gold, Esq.  
Thuillez, Ford, Gold & Conolly  
90 State Street, Suite 1500  
Albany, New York 12207-1715

Thomas F. Moran, M.D.  
26 Evergreen Way  
North Tarrytown, New York 10591-1119

APPENDIX I

Case MORAN Ex 1  
PETITIONER  
For ID 1-21-94 111  
In Ext 1-21-94 111

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

-----X  
: IN THE MATTER : NOTICE OF  
: OF : REFERRAL  
: THOMAS F. MORAN, M.D. : PROCEEDING  
: :  
-----X

TO: THOMAS F. MORAN, M.D.  
26 Evergreen Way  
North Tarrytown, New York 10591-1119

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). 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 October at 10:00 o'clock in the forenoon of that day at the New York State Department of Health, Corning Tower, Bureau of Adjudication, Corning Tower, Room 2509, Empire State Plaza, Albany, New York 12237.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: Nancy Massarioni (henceforth "Bureau of Adjudication") as well as to the Department of Health attorney indicated below, on or before October 12, 1993.

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address

indicated above on or before October 12, 1993, 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 Judge Storch 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  
*September 16, 1993*

*Peter D. Van Buren*

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PETER D. VAN BUREN  
Bureau of Professional Medical  
Conduct

Inquiries should be addressed to:  
Kevin P. Donovan  
Assistant Counsel  
(518) 474-8266

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
THOMAS F. MORAN, M.D. : CHARGES

-----X

THOMAS F. MORAN, M.D., the Respondent, was authorized to practice medicine in New York State on August 14, 1981, by the issuance of license number 147366 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993, through December 31, 1994, with a registration address of 26 Evergreen Way, North Tarrytown, New York 10591-1119.

FACTUAL ALLEGATIONS

A. By Order of the Board of Medicine of the State of Michigan dated June 1, 1992, Respondent was found to have been in violation of Michigan Public Health Code §16621 [MCLA 333.16221], specifically §16221 (b)(iii) by having a mental

or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner; and to have been in violation of Michigan Public Health Code §16621(g) by failing to comply with a written order to submit to a mental or physical examination; Respondent's license to practice medicine in Michigan was suspended for a period of 6 months and 1 day, with the proviso that reinstatement would only be upon Respondent applying for reinstatement and proving by clear and convincing evidence that he was, among other things, mentally and physically able to practice the profession with reasonable skill and safety.

B. The conduct resulting in this action against Respondent's license in Michigan, if committed in New York State, would constitute the following misconduct under the laws of New York, namely: having a psychiatric condition which impairs the licensee's ability to practice within the meaning of New York Education Law §6530(8) (McKinney Supp. 1993), and failure to comply with an order issued pursuant to Public Health Law Section 230 (7) within the meaning of New York Education Law §6530(15) (McKinney Supp. 1993).

#### FIRST SPECIFICATION

The Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d) (McKinney Supp. 1993) in that he had his license suspended or

other disciplinary action taken against his license, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts of paragraphs A and B.

#### SECOND SPECIFICATION

The Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(b) (McKinney Supp. 1993) in that he had 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 of paragraphs A and B.

DATED: Albany, New York  
*September 16, 1993*

*Peter D. Van Buren*

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

APPENDIX II

APPENDIX II  
TERMS OF PROBATION

1. Dr. Moran 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 imposed by law and by his profession.

2. Dr. Moran shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Dr. Moran shall submit prompt written notification to the Board addressed to the Director, office of Professional Medical conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Dr. Moran leaves New York to reside or practice outside the State, Dr. Moran shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

5. Dr. Moran shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Moran's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.

6. Dr. Moran shall engage in regular therapy sessions with a board-certified psychiatrist who has been in practice as such for at least five years, selected by Dr. Moran and subject to the approval of the Office of Professional Medical Conduct. The psychiatrist shall submit quarterly reports to the Director of the Office of Professional Medical Conduct certifying compliance with treatment by Dr. Moran and describing in detail any failure to comply. The psychiatrist shall immediately report to the Office of Professional Medical Conduct any discontinuation of treatment by Dr. Moran Dr. Moran

shall not practice medicine until an acceptable psychiatrist is approved by the Director.

7. Dr. Moran shall engage in a regular, ongoing course of treatment with a board-certified neurologist, who has been in practice as such for at least five years, selected by Dr. Moran and subject to the approval of the Office of Professional Medical Conduct. The neurologist shall submit quarterly reports to the Director of the Office of Professional Medical conduct certifying compliance with treatment by Dr. Moran and describing in detail any failure to comply. The psychiatrist shall immediately report to the Office of Professional Medical Conduct any discontinuation of treatment by Dr. Moran. Dr. Moran shall not practice medicine until an acceptable neurologist is approved by the Director.

8. Dr. Moran shall limit his medical practice to activities which do not involve any direct patient care responsibilities or any direct patient contact.

9. Dr. Moran shall have quarterly meetings with a monitoring physician who shall review Dr. Moran's practice. This monitoring physician shall review randomly selected medical records and evaluate whether Dr. Moran's practice comports with generally accepted standards of medical practice. this monitoring physician shall be selected by Dr. Moran and is subject to the approval of the Director of the Office of Professional Medical Conduct. Dr. Moran shall not practice medicine until an acceptable monitoring physician is approved by the Director.

10. Dr. Moran shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.

11. Dr. Moran shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Moran elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

12. If there is full compliance with every term set forth herein, Dr. Moran may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Moran pursuant to New York Public Health Law §230(19) or any other applicable laws.