



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

PUBLIC

October 29, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

William H. Nelson, M.D.
120 Travelers Way
St. Simons Island, Georgia 31522

William H. Nelson, M.D.
St. Simons Island Clinic, PC
284 Redfern Village
St. Simons Island, Georgia 31522

Todd C. Brooks, Esq.
Catts & Brooks
1529 ½ Reynolds Street
P.O. Box 1994
Brunswick, Georgia 31521-1991

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional Medical
Conduct
Division of Legal Affairs
Hedley Building, Suite 303
433 River Street
Troy, New York 12180

RE: In the Matter of William H. Nelson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-283) 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 cursive script that reads "Sean D. O'Brien". The signature is written in dark ink and is positioned above the printed name and title.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh
Enclosure

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

COPY

**IN THE MATTER
OF
WILLIAM H. NELSON, M.D.**

**DETERMINATION
AND
ORDER**

BPMC NO. 03-283

A hearing was held on October 22, 2003, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated August 1, 2003, were served upon the Respondent, **William H. Nelson, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **John W. Choate, M.D.**, Chairperson, **John B. Waldman, M.D.**, and **Ms. Frances Tarlton**, 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 **Paul Robert Maher, Esq.**, and **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing, either in person or by counsel. However, by his attorney, **Todd C. Brooks, Esq.**, Catts & Brooks, 1529½ Reynolds Street, P.O. Box 1994, Brunswick, Georgia 31521-1994, the Respondent submitted a document for inclusion in the record. The document was admitted into evidence as Respondent's Exhibit A.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

2. On April 4, 2003, the Georgia Composite State Board of Medical Examiners, by a Public Consent Order ("Georgia Order"), required the Respondent to complete successfully a mini-residency entitled "Appropriate Prescribing of Controlled Substances," based on the Respondent's prescribing controlled substances on several occasions when his Georgia license to practice medicine was suspended (Petitioner's Ex. 5).

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(12), which defines as professional misconduct the practice of medicine while the physician's license is suspended.

The Petitioner also charged that the Respondent's prescription of controlled substances while his Georgia license was suspended would have constituted another form of professional misconduct, had it occurred in New York State, pursuant to New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;..." The Hearing Committee concludes that there is not enough information in the hearing record to sustain this allegation. There is no evidence regarding the circumstances under which the prescriptions were written. In particular, the record is silent on the Respondent's motivation for writing the prescriptions and any personal gain he might have received. Without such information, it would be guesswork to conclude that the writing of these prescriptions demonstrates moral unfitness.

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

There is no dispute between the Petitioner and the Respondent on whether the Respondent prescribed controlled substances while his Georgia license was suspended. The parties do dispute whether this violation of the Respondent's professional responsibilities constitutes moral unfitness. The Hearing Committee rules in the Respondent's favor on this issue for the reasons stated above.

There is very little dispute between the parties as to the penalty that should be imposed by this Hearing Committee. The Petitioner seeks a civil penalty of \$1,000.00. The Respondent recommends a civil penalty of \$500.00. In Respondent's Exhibit A, the Respondent offered no explanation in mitigation of his prescribing controlled substances during the suspension of his Georgia license. There is also no statement of contrition or

assurance that such misconduct will not reoccur. The only evidence in the Respondent's favor is a statement in his Exhibit A that he has completed the mini-residency required by the Georgia Order. Given these factors, the Hearing Committee will impose the \$1,000.00 civil penalty sought by the Petitioner.

ORDER

IT IS HEREBY ORDERED THAT:

1. A civil penalty of \$1,000.00 is imposed on the Respondent. The civil penalty is payable in full within 60 days of the effective date of this Order. Payment must be submitted to the Bureau of Accounts Management, New York State Department of Health, Empire State Plaza, Coming Tower, Room 1258, Albany, New York 12237.
2. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State, including, but not limited to imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).
3. This Order shall be effective upon service on the Respondent pursuant to Public Health Law Section 230(10)(h).

DATED: Austerlitz, New York
10/27, 2003



John W. Choate, M.D.
Chairperson

John B. Waldman, M.D.
Frances Tarlton

APPENDIX 1

ORIGINAL

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



IN THE MATTER

NOTICE OF

OF

REFERRAL

**WILLIAM H. NELSON, M.D.
CO-03-05-2182-A**

PROCEEDING

**TO: WILLIAM H. NELSON, M.D.
120 Travelers Way
St. Simons Island, GA 31522**

**WILLIAM H. NELSON, M.D.
St. Simons Island Clinic, PC
284 Redfern Village
St. Simons Island, GA 31522**

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 17th day of September 2003, 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.

JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 8, 2003.

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 September 8, 2003, 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

August 1, 2003



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
WILLIAM H. NELSON, M.D.
CO-03-05-2182-A

STATEMENT
OF
CHARGES

WILLIAM H. NELSON, M.D., the Respondent, was authorized to practice medicine in New York state on June 4, 1992, by the issuance of license number 189070 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 4, 2003, the Composite State Board of Medical Examiners, State of Georgia (hereinafter "Georgia Board"), by a Public Consent Order (hereinafter "Georgia Order"), required Respondent to successfully complete a Mini-Residency entitled "Appropriate Prescribing of Controlled Substances," based on prescribing controlled substances on more than one occasion when his license to practice medicine was administratively suspended.

B. The conduct resulting in the Georgia 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(12) (practicing the profession while the license is suspended); and/or
2. New York Education Law §6530(20) (moral unfitness).

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: *August 1*, 2003
Albany, New York


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