



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

April 15, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Harry Clements, M.D.
Koppers Bldg.
436 Seventh Avenue
Pittsburgh, PA 15219-1818

Kevin P. Donovan, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2429
Albany, New York 12237

RE: In the Matter of Harry Clements, M.D.

Dear Dr. Clements and Mr. Donovan:

Enclosed please find the Determination and Order (No. BPMC-93-59) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
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 (p), 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.

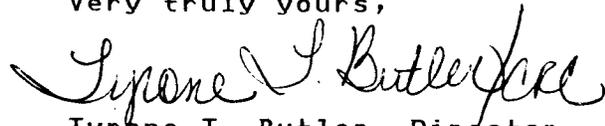
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler". The signature is written in black ink and is positioned above the typed name and title.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

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IN THE MATTER ; DETERMINATION
OF ; AND
HARRY CLEMENTS, M.D. ; ORDER
-----X

ORDER NO. BPMC-93-59

A Notice of Hearing and Statement of Charges, both dated January 26, 1993, were served upon the Respondent, HARRY CLEMENTS, M.D.

CHARLOTTE S. BUCHANAN, ESQ., (Chair), JOHN H. HOBICA, M.D. and ALVIN RUDORFER, D.O., 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. MICHAEL P. MCDERMOTT, ESQ., Administrative Law Judge, served as the Administrative Officer. A hearing was held on March 10, 1993. The Department of Health appeared by KEVIN P. DONOVAN, ESQ., Assistant Counsel. The Respondent appeared Pro Se, 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 Section 6530(9). In such cases, a licensee is charged with misconduct 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)(b). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

WITNESSES

For the Petitioner:

NONE

For the Respondent:

Harry Clements, M.D., the Respondent
John Doherty, Esq.
Dennis Harrington, Esq.
John Botula, Esq.

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. HARRY CLEMENTS, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1970, by the issuance of license number 106328 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 December 31, 1992 through December 31, 1994 (Pet's. Exs. 1 and 2).

2. By Order dated May 26, 1989, Respondent was convicted of violations of 21 United States Code 841(a)(1) and (b)(1)(c), namely distributing a quantity of Oxycodone, a Schedule II Narcotic Drug, as charged in counts 1 through 151 of the indictment in Criminal Case No. 88-99 in the United States District Court for the Western District of Pennsylvania; Respondent was sentenced to eight years of imprisonment (Pet's. Ex. 3).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless otherwise noted.

The Hearing Committee concludes that the Petitioner has sustained its burden of proof. The preponderance of the

evidence demonstrates that the Respondent was convicted of committing an act constituting a crime under Federal Law, 21 USC 841(a)(1) and (b)(1)(c).

Accordingly, the specification in the Statement of Charges, charging the Respondent with professional misconduct within the meaning of New York Education Law §6530(a)(a)(ii), (McKinney's Supp. 1993) (formerly New York Education Law §6509(5)(a)(ii) is **SUSTAINED**.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that despite the mitigating circumstances as testified to by the Respondent and by the witnesses who appeared on his behalf, the acts by the Respondent which led to his conviction of a crime under federal law are so egregious that they evidence his unfitness for the practice of medicine in New York State. The Respondent's license to practice medicine should be **REVOKED**.

ORDER

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

1. The Specification of professional misconduct contained in the Statement of Charges (Pet's. Ex. #1) is **SUSTAINED.**

2. The Respondent's license to practice medicine in the State of New York is **REVOKED.**

DATED: Albany, New York
April 8, 1993

Charlotte S. Buchanan
CHARLOTTE S. BUCHANAN, ESQ.
Chairperson

JOHN H. HOBIKA, M.D.
ALVIN RUDORFER, D.O.

TO: Harry Clements, M.D.
320 Fort Duquesne Boulevard
Pittsburgh, PA 15222

Kevin P. Donovan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2429
Albany, New York 12237-0026

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

-----X

IN THE MATTER : STATEMENT
OF : OF
HARRY M. CLEMENTS, M.D. : CHARGES

-----X

HARRY M. CLEMENTS, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1970, by the issuance of license number 106328 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine. Respondent's last known address is 320 Fort Duquesne Boulevard, Pittsburg, Pennsylvania 15222.

FACTUAL ALLEGATIONS

A. By Order dated May 26, 1989, Respondent was convicted of violations of 21 United States Code 841(a)(1) and (b)(1)(c), namely distributing a quantity of Oxycodone, a Schedule II Narcotic Drug, as charged in counts 1 through 151 of the indictment in Criminal Case No. 88-99 in the United States District Court for the Western District of Pennsylvania; Respondent was sentenced to eight years of imprisonment.

SPECIFICATION

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(a)(ii) (McKinney's Supp. 1993) [formerly New York Education Law §6509(5)(a)(ii)] in that he has been convicted of committing an act constituting a crime under federal Law in that Petitioner charges:

1. The facts of paragraph A.

DATED: Albany, New York
January 26, 1990



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