



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 31, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Robert Bogan, Esq.
New York State Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237-0032

Ronald E. Fincher, M.D.
2787 Margaret Mitchell Drive, NW
Atlanta, Georgia 30327

Mr. Paul Maher, Esq.
New York State Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237-0032

RE: In the Matter Ronald E. Fincher, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-222) 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.

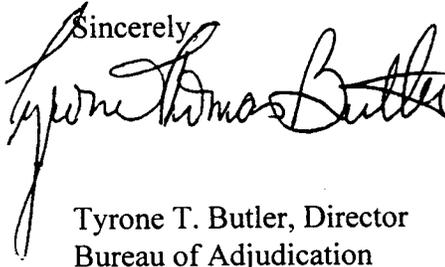
All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

DETERMINATION

AND

ORDER

IN THE MATTER
OF
RONALD E. FINCHER, M.D.

ORDER # 99-222

COPY

A Notice of Referral Proceedings and Statement of Charges, both dated June 23, 1999, were served upon the Respondent, **RONALD E. FINCHER, M.D.**

DAVID T. LYON, M.D., Chairperson, **HRUSIKESH PARIDA, M.D.** and **KAREN WOLF, R.P.A.**, 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 August 19, 1999, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL R. MAHER, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf.

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such a case, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **RONALD E. FINCHER, M.D.**, the Respondent, was authorized to practice medicine in New York State on May 29, 1993 by the issuance of license number 192340 by the New York State Education Department (Pet's. Ex. 4).

2. On May 29, 1998, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine, (hereinafter "Virginia Board"), issued an Order, (hereinafter "Virginia Order"), that reprimanded the Respondent.

"The "Virginia Board" found:

"1. On or about May 31, 1997, while on call on Warren Memorial Hospital ("Hospital") in Front Royal, Virginia, Dr. Fincher attended a wine festival where, by his admission, he consumed wine over a period of several hours. Hospital records show that Dr. Fincher was paged several times to aid in an imminent birth. Upon Dr. Fincher's arrival at the Hospital, a staff member smelled alcohol on his breath and reported her suspicion to a Hospital administrator. An emergency room physician noticed that Dr. Fincher's speech was slurred and that his processes appeared to be slow. Subsequently, Dr. Fincher submitted to a blood test that revealed his blood level to be .098.

2. Upon receipt of Dr. Fincher's blood test results, the Hospital suspended Dr. Fincher's privileges." (Pet's. Ex. 5)

HEARING COMMITTEE DETERMINATION

The Hearing Committee has had the opportunity to listen to the Respondent's testimony, to ask him questions, and to observe his demeanor during the course of this hearing.

The Hearing Committee finds that the Respondent was an honest, forthright, credible and cooperative witness who was obviously very diligent in assembling the evidence which he submitted on his own behalf.

The Respondent readily admitted that he had attended a wine festival and had consumed wine over a period of several hours as stated in the Virginia Board's Order. He testified however, that the hospital administration was aware that he was attending the wine festival, and in fact, it was part of his public relations duties for the hospital to attend such community affairs.

While admitting that he did consume wine at the festival, he contends that the quantity he consumed could not possibly have resulted in a blood/alcohol level of .098, which he testified was the blood/alcohol level defining intoxication in the State of Virginia.

Notwithstanding the Respondent's credible testimony, this Hearing Committee is bound to give full faith and credit to the Virginia Board's Order.

It is obvious that the hospital relied on the blood/alcohol test results when it suspended the Respondent's hospital privileges, and that the Virginia Board relied on the hospital's findings when it issued the Order reprimanding the Respondent.

In the instant case the Respondent is charged with violating Sections 6530(9)(b) and (d) of the Public Health Law, both of which provide that the action of the duly authorized

professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York, constitute professional misconduct under the laws of New York state.

While the blood/alcohol level defining intoxication is .098 in Virginia, the blood/alcohol level defining intoxication in New York is .10 (Sec. 1192(2) N.Y.S. Vehicle and Traffic Law).

The Hearing Committee also takes notice of the fact that the hospital records written by the Respondent on the date in question are appropriate for the patient he was treating at that time.

The Hearing Committee determines unanimously (3-0) that the conduct which resulted in the Virginia Board's action against the Respondent, would not constitute professional misconduct if committed in New York.

The Hearing Committee also determines that the Respondent is not a danger to the people of the State of New York.

The charges against the Respondents should be **DISMISSED**.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Respondent violated New York Education Law §6530 (9)(b) by reason of 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: NOT SUSTAINED (3-0)

SECOND SPECIFICATION

The Respondent violated New York State Education Law 6530(9)(d) by reason of his having had disciplinary action taken against him by 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: NOT SUSTAINED (3-0)

ORDER

IT IS HEREBY ORDERED THAT:

1. The charges against the Respondent are **DISMISSED**.
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal or by certified or registered mail.

DATE: **SCHENECTADY, NEW YORK**

8/25/99



DAVID T. LYON, M.D.
Chairperson

HRUSIKESH PARIDA, M.D.
KAREN WOLF, R.P.A.

APPENDIX ONE

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

-----X

IN THE MATTER : STATEMENT
OF : OF
RONALD E. FINCHER, M.D. : CHARGES

-----X

RONALD E. FINCHER, M.D., the Respondent, was authorized to practice medicine in New York state on June 9, 1993, by the issuance of license number 192340 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 29, 1998, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine, (hereinafter "Virginia Board"), issued an Order, (hereinafter "Virginia Order"), that reprimanded the Respondent, based on the Respondent having consumed wine over a period of several hours while on hospital call; that alcohol was smelled on his breath, his speech appeared slurred, and his processes appeared to be slow when he arrived at the hospital to aid in an imminent birth.

B. The conduct resulting in the Virginia Board's 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(4) (gross negligence);
2. New York Education Law §6530(7) (practicing the profession while impaired by alcohol); and/or
3. New York Education Law §6530(20) (moral unfitness).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by reason of 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 the Petitioner charges:

1. The facts in paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by reason of his having had disciplinary action taken against him 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, in that the Petitioner charges:

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

DATED: *June 23*, 1999
Albany, New York

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