



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 6, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michele Y. Tong, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Francis Alan Dwan, M.D.
2201 S. Pulaski
Chicago, Illinois 60623

RE: In the Matter of Francis Alan Dwan, M.D.

Dear Ms. Tong and Dr. Dwan:

Enclosed please find the Determination and Order (No. 97-271) 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.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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.

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.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** 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
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 "Tyrone T. Butler" followed by a stylized flourish.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

**IN THE MATTER
OF
FRANCIS ALAN DWAN, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-97-271

A Notice of Referral Proceeding and Statement of Charges, both dated June 24, 1997, were served upon the Respondent, Francic Alan Dwan, M.D. **GERALD M. BRODY, M.D. (Chair), WILLIAM K. MAJOR, JR., M.D. and KENNETH KOWALD,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Michele Y. Tong, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. Evidence was received, statements were heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited proceeding where 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 prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding 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)(d) (disciplinary action taken against the license by another state). The charges herein arises from Respondent surrendering his license in Wisconsin after being charged with violating the terms of his limited license and being denied a license in Michigan based both on the surrender in Wisconsin and an independent evaluation by Michigan which found that the Respondent to be suffering from alcohol dependence among other things. The allegations in this proceeding are more particularly set forth in the Statement of Charges, a copy of which are attached to this Determination and Order as Appendix One.

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 exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Francis Alan Dwan, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on May 12, 1978, by the issuance of license number 134312 by the New York State Education Department. (Pet. Ex. 1)
2. On or about November 1, 1982, Respondent was granted a limited license to practice medicine and surgery in Wisconsin. This limited license was granted after the Respondent entered into a Stipulation with the Wisconsin Medical Examining Board (hereinafter the Board), agreeing to continue to participate in the DePaul Rehabilitation Hospital Impaired Physician's Program, Milwaukee, Wisconsin. (Pet. Ex. 3)
3. On or about September 1, 1983, the Respondent left the DePaul Rehabilitation Hospital Impaired Physician's Program in violation of the terms of his limited license. (Pet. Ex. 3)
4. On or about October 26, 1983, the Wisconsin Department of Regulation and Licensing instituted a disciplinary action against the Respondent by issuing a Complaint alleging the Respondent violated the terms of his limited license. (Pet. Ex. 3)
5. On or about January 26, 1984, the Board issued a final Decision and Order adopting the Proposed Decision of the Hearing Examiner. The Hearing Examiner's Proposed Decision incorporated a Stipulation signed by the Respondent and the Board which included an admission by the Respondent that he violated the terms of his limited license and wherein he voluntarily surrendered his Wisconsin license to practice medicine and surgery. (Pet. Ex. 3)

6. On or about October 30, 1995, the Respondent filed an application for Medical and Controlled Substances Licenses with the Michigan Board of Medicine. (Pet. Ex. 3)

7. On or about January 22, 1996, as part of the Michigan application process, the Respondent was evaluated under the auspices of the Michigan Health Professional Recovery Program. He was diagnosed as suffering from alcohol dependence, bipolar affective disorder by history, amphetamine dependence by history and benzodiazepine dependence by history. Respondent was given treatment recommendations which he refused to follow. (Pet. Ex. 3)

8. On or about May 21, 1996, the Michigan Board of Medicine issued a Notice of Intention to Deny Application for Licensure based on the disciplinary action against the Respondent in Wisconsin and his conduct in the Michigan application process. On or about July 16, 1996, the Michigan Board of Board of Medicine entered as a Final Order of Denial the Notice of May 21, 1996. (Pet. 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 Committee unless noted otherwise.

The Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent surrendered his license in Wisconsin after a disciplinary action was instituted in that state and had his license application refused in Michigan. In the Wisconsin proceeding

the disciplinary action was based on the Respondent violating the terms of his Limited License in that state. The Michigan action was founded on both the Wisconsin determination and that the Respondent suffered from drug and alcohol dependence. The conduct which resulted in the voluntary license surrender in Wisconsin and the license denial in Michigan would if committed in this state constitute misconduct under Education Law Section § 6530(8) and (29) respectively. Consequently, the Committee voted to sustain the Specification.

DETERMINATION AS TO PENALTY

The 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 revoked. 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.

The Respondent has displayed his inability to control his alcohol and drug dependency and his inability to fulfill his legal commitments as indicated by his conduct in Wisconsin and subsequently in Illinois. As recently as January 1996 the Respondent admitted he had been in relapse for 18 months prior. Additionally, the Respondent submitted documentation regarding urine testing which included 13 missed samples

without any explanation. Furthermore, the Respondent did not appear or offer any explanation for the missed sampling. The Respondent also submitted documentation relating to his performance on the Special Purpose Examination (SPEX) which showed borderline performance in many categories. For the above noted reasons the Committee decided to revoke the Respondent's license. The Committee feels that the practice of medicine in New York is a privilege and that the Respondent's conduct does not warrant his retaining that privilege.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: Tuckahoe, New York

November 3, 1997



GERALD M. BRODY, M.D. (CHAIR)

William K. Major, Jr., M.D.

Kenneth Kowald



TO: Michele Y. Tong, Esq.
Assistant Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
5 Penn Plaza
Suite 601
New York, N.Y. 10001

Francis Alan Dwan, M.D.
2201 S. Pulaski.
Chicago, Illinois 60623

APPENDIX ONE

IN THE MATTER
OF
FRANCIS ALAN DWAN, M.D.

STATEMENT
OF
CHARGES

FRANCIS ALAN DWAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 12, 1978, by the issuance of license number 134312 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about October 26, 1983, an investigator for the Wisconsin Department of Regulation and Licensing, Division of Enforcement filed a complaint with the Wisconsin Medical Examining Board complaining that Respondent violated the terms of his limited license in that he left the Depaul Rehabilitation Hospital Impaired Physician's Program and was terminated from said program on September 1, 1983, thereby displaying unprofessional conduct within the meaning of Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(b).
- B. On or about January 26, 1984, the Wisconsin Board entered a Final Decision and Order accepting Respondent's voluntary surrender of his Wisconsin license in lieu of further disciplinary proceedings.
- C. On or about July 16, 1996, the Michigan Medical Board entered a Notice of Intention to Deny Application for Licensure dated May 21, 1996 as a Final Order to deny the medical license application of Respondent for reason that

he violated the terms of his limited Wisconsin medical license by leaving an impaired physician's program, surrendered his Wisconsin license in lieu of further disciplinary proceedings, and refused to follow the treatment recommendations of the Michigan Health Professional Recovery Program (HPRP) after being diagnosed as suffering from alcohol dependence, bipolar affective disorder by history, amphetamine dependence by history, and benzodiazepine dependence by history, in violation of section 16221(a) of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq, and/or substance abuse in violation of section 16221(b)(ii) of the Public Health Code, supra.

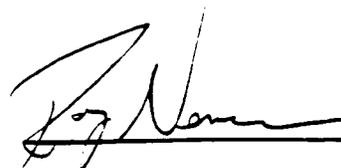
SPECIFICATION OF CHARGES
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1996) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530 [8] and [29] as alleged in the facts of the following:

1. Paragraphs A, B, and C.

DATED:

June
May 24, 1997
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct