



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

March 25, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dennis Ray Porter, M.D.
21301 Powerline Road 104
Boca Raton, Florida 33433

Dennis Ray Porter, M.D.
2330 SW 27TH Avenue, Apt. 27
Ft. Lauderdale, Florida 33312

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – 4th Floor
Troy, New York 12180

RE: In the Matter of Dennis Ray Porter, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-51) 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 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.

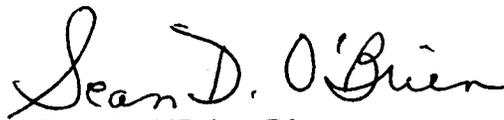
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah
Enclosure

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

**IN THE MATTER
OF
DENNIS RAY PORTER, M.D.**

BPMC #05-51
DETERMINATION

AND

ORDER

COPY

A hearing was held on March 16, 2005, 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 January 27, 2005, were served upon the Respondent, **Dennis Ray Porter, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D.**, Chairperson, **Robert J. Corona, D.O.**, and **Rev. Edward J. Hayes**, 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 **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing, either in person or by counsel.

Evidence was received and transcripts of these proceedings were made.

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

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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.

1. Dennis Ray Porter, M.D., the Respondent, was authorized to practice medicine in New York State on April 11, 1986, by the issuance of license number 165894 by the New York State Education Department (Petitioner's Ex. 5).

2. On February 23, 2001, the Florida Board of Medicine, by a Final Order ("Florida Order"), indefinitely suspended the Respondent's license to practice medicine, imposed a \$5000.00 fine, required the Respondent to sign and comply with a five-year

contract with the Physician Recovery Network, and, if and when his license is reinstated, placed him on five years probation. This determination was based on the Respondent's prescribing controlled substances outside the course of his professional practice, committing fraud in his professional practice, practicing medicine below the acceptable level of care and failing to maintain adequate medical records (Petitioner's Ex. 6).

3. On November 10, 2004, the North Carolina Medical Board, by a Findings of Fact, Conclusions of Law, and Order of Discipline ("North Carolina Order"), suspended indefinitely the Respondent's medical license, based on the Florida action described in finding of fact 2 (Petitioner's Ex. 7).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent that was the subject of the Florida Order 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(2) - "Practicing the profession fraudulently or beyond its authorized scope;"
- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(4) - "Practicing the profession with gross negligence on a particular occasion;"
- New York Education Law Section 6530(5) - "Practicing the profession with incompetence on more than one occasion;"
- New York Education Law Section 6530(6) - "Practicing the profession with gross incompetence;"
- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;"

- New York Education Law Section 6530(24) - "Practicing or offering to practice beyond the scope permitted by law..." and

- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

The Hearing Committee concludes that the conduct of the Respondent that was the subject of the North Carolina Order 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(9)(d) - "Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken...where the conduct resulting in the revocation, suspension or other disciplinary action involving the license...would, if committed in New York state, constitute professional misconduct under the laws of New York state;"

VOTE OF THE HEARING COMMITTEE

FIRST AND SECOND SPECIFICATIONS

"Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized disciplinary agency of another state, where the conduct resulting in the suspension would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing. The Administrative Law Judge, however, ruled that Petitioner's Exhibits 3, 4, 8 and 9 proved that the Petitioner had met the requirements of law for service of the Notice of Referral Proceeding and Statement of Charges and that the hearing could proceed on the merits in the Respondent's absence.

The Administrative Law Judge granted a motion by the Petitioner to amend the Statement of Charges. In paragraph C.5 of the Factual Allegations, the word "negligence" was amended to "incompetence."

The Florida Order is based on the Respondent's prescribing of Schedule II controlled substances on numerous occasions to persons whom he knew had no legitimate medical need for the drugs and whom he knew were going to engage in the criminal sale of those drugs. The Respondent received cash compensation from these persons for the prescriptions.

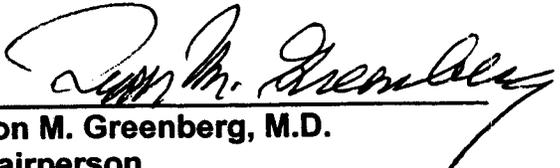
This is egregiously unacceptable behavior for a physician and clearly constitutes professional misconduct under New York State law. The Petitioner recommended that the Respondent's license to practice medicine be revoked. Since the Respondent was not present at the hearing, there is no evidence in the hearing record of mitigating circumstances, remorse or rehabilitation. The Respondent's license will be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

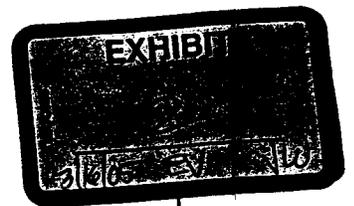
DATED: Albany, New York
March 25, 2005


Lyon M. Greenberg, M.D.
Chairperson

Robert J. Corona, D.O.
Rev. Edward J. Hayes

APPENDIX I

ORIGINAL



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

IN THE MATTER

NOTICE OF

OF

REFERRAL

DENNIS RAY PORTER, M.D.
CO-04-12-6206-A

PROCEEDING

TO: DENNIS RAY PORTER, M.D.
21301 Powerline Road 104
Boca Raton, FL 33433

DENNIS RAY PORTER, M.D.
2330 SW 27th Avenue, Apt. 27
Ft. Lauderdale, FL 33312

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 16th day of March 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 5th Floor, 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. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before March 7, 2005.

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 March 7, 2005, 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.

IN THE MATTER
OF
DENNIS RAY PORTER, M.D.
CO-04-12-6206-A

STATEMENT
OF
CHARGES

DENNIS RAY PORTER, M.D., the Respondent, was authorized to practice medicine as in New York state on September 18, 1997, by the issuance of license number 165894 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 23, 2001, the State of Florida, Board of Medicine (hereinafter "Florida Board") by a Final Order (hereinafter "Florida Order"), indefinitely suspended Respondent's license to practice medicine; if and when Respondent's license to practice medicine is reinstated, placed him on five (5) years probation with terms and conditions; required him to sign and adhere to a five (5) year contract with Physician Recovery Network; and imposed a \$5,000.00 fine; based on prescribing controlled substances outside the course of his professional practice, fraud in or related to the practice of medicine, practicing medicine below the acceptable level of care, and failing to maintain appropriate medical records.

B. On or about November 10, 2004, the North Carolina Medical Board (hereinafter "North Carolina Board"), by a Findings of Fact, Conclusions of Law, and Order of Discipline (hereinafter "North Carolina Order"), SUSPENDED INDEFINITELY Respondent's medical license, based on the State of Florida action set forth in Paragraph A, above.

C. The conduct resulting in the Florida 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (negligence on more than one occasion);

3. New York Education Law §6530(4) (gross negligence);
4. New York Education Law §6530(5) (incompetence on more than one occasion);
5. New York Education Law §6530(6) (gross ^{incompetence} negligence);
6. New York Education Law §6530(20) (moral unfitness);
7. New York Education Law §6530(24) (practicing beyond the scope permitted by law); and/or
8. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation of the patient).

D. The conduct resulting in the North Carolina Medical 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(9)(d) (having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary action of another state, wherein the conduct resulting in the suspension or other disciplinary action would, if committed in this state, constitute professional misconduct under the laws of this state).

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or C.
2. The facts in Paragraphs A, B, C, and/or D.

DATED: *January 27, 2005*
Albany, New York


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