



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

April 22, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert A. Vavrick, M.D.
Redacted Address

Robert A. Vavrick, M.D.
Redacted Address

Robert Bogan, Esq.
NYS Department of Health
433 River Street - 4th Floor
Troy, New York 12180

RE: In the Matter of Robert A. Vavrick, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-66) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

Redacted Signature
James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

**IN THE MATTER
OF
ROBERT A. VAVRICK, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #08-66

COPY

A Notice of Referral Proceeding and Amended Statement of Charges, dated January 8, 2008, were served upon the Respondent, **ROBERT A. VAVRICK, M.D., IRVING S. CAPLAN (Chair), GREGORY FRIED M.D.,** and **SHELDON GAYLIN M.D.**, 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. **KIMBERLY A. O'BRIEN, ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by, Thomas Conway, Esq., General Counsel, **ROBERT BOGAN, ESQ.,** of counsel. The Respondent did not appear either in person or by his representative. Evidence was received, 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 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 (4), (7), (8), (9)(b)&(d). Copies of the Notice of Referral Proceeding and the Amended Statement of Charges are attached to this Determination and Order as Appendix 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the evidence presented in this matter. All Findings and Conclusions herein are the unanimous determination of the Committee. Having heard testimony and considered evidence presented by the Department of Health, the Committee hereby makes the following findings of fact. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. All Findings of Fact made by the Committee were unanimous unless otherwise noted.

1. **ROBERT A. VAVRICK, M.D.**, (hereinafter " Respondent"), was authorized to practice medicine in New York State on March 20, 1974, by the issuance of license number 119552 by the New York State Education Department (Ex. 4).
2. On or about February 9, 2007, the Arizona Medical Board (hereinafter Arizona Board) issued a Consent Agreement for Letter of Reprimand (hereinafter Consent Agreement & Reprimand I). Respondent was placed on five years probation with terms and conditions based on habitual intemperance in the use of alcohol or habitual substance abuse, conduct or practice which is or might be harmful or dangerous to the patient or the public, and reporting to work under the

influence of alcohol (Ex.5).

3. On or about June 9, 2007, the Arizona Board issued a Consent Agreement for Letter of Reprimand (hereinafter Consent Agreement & Reprimand II). The Respondent was reprimanded by the Arizona Board for failing “to order a head CT and lumbar puncture for a patient with altered level of consciousness and acute headache”(Ex. 6). The Respondent’s actions constitute “unprofessional conduct or practice that is or might be harmful or dangerous to the health of a patient or the public,” and “conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm or death of a patient.”
4. The Respondent did not appear in person or by his representative.

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(4) - “Practicing the profession with gross negligence on a particular occasion;”
- New York Education Law Section 6530(7) - “Practicing the profession while impaired by alcohol;”
- New York Education Law Section 6530(8) - “being a habitual abuser of alcohol.”

VOTE OF THE HEARING COMMITTEE

FIRST & SECOND SPECIFICATIONS

“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)

THIRD & FORTH SPECIFICATIONS

“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, if committed in New York state, constitutes professional misconduct under the laws of New York state...”

VOTE: Sustained 3-0

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing either in person or by counsel. The Administrative Law Judge ruled that Petitioner proved that the Notice of Referral Proceeding and the Statement of Charges had been served on the Respondent, that jurisdiction over the Respondent had been established, and that the hearing could proceed on the merits despite the Respondent’s absence (Ex. 2,3 &4).

In this instance, the Hearing Committee’s role was to determine the appropriate penalty. The Department presented unrefuted documentary evidence, specifically two Consent Agreements and Reprimands both issued by the Arizona Board in 2007 (Ex. 5&6). The Arizona Board found that the Respondent has a serious habitual alcohol or habitual substance abuse problem and reported to work while under the influence of alcohol, and in a separate action found that Respondent failed to order a head CT scan and lumbar puncture for a patient with an altered level of consciousness and acute headache. It was determined by the Arizona Board that Respondent’s actions constitute “conduct or practice that is or might be harmful or dangerous to the health of a patient or the public,” and “conduct that the board determine[d] is gross negligence, repeated negligence or negligence resulting in harm or death of a patient” (Ex. 5&6).

The Hearing Committee concluded that based upon the recent and serious nature of the misconduct and Respondent's failure to appear and/or submit any mitigating information about his present condition or practice, they have no other recourse but to revoke the Respondent's license to practice medicine.

ORDER

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

1. The Respondent's license to practice medicine in New York State is hereby **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: 4-20, New York
2008

Redacted Signature

IRVING S. CAPLAN (CHAIR)
GREGORY FRIED, M.D.
SHELDON GAYLIN, M.D.

TO: Robert A. Vavrick, M.D.

Redacted Address

Robert A. Vavrick, M.D.

Redacted Address

Robert Bogan
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
433 River Street
Troy, New York 12180

Appendix 1

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



IN THE MATTER
OF
ROBERT A. VAVRICK, M.D.
CO-07-03-1255-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ROBERT A. VAVRICK, M.D.
Redacted Address

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§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 20th day of February, 2008, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. 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 which 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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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

Jan. 8, 2008

Redacted Signature

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

ROBERT A. VAVRICK, M.D.
CO-07-03-1255-A

AMENDED
STATEMENT
OF
CHARGES

ROBERT A. VAVRICK, M.D., Respondent, was authorized to practice medicine in New York state on March 20, 1974, by the issuance of license number 119552 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 9, 2007, the Arizona Medical Board (hereinafter "Arizona Board"), by a Consent Agreement for Letter of Reprimand (hereinafter "Arizona Agreement 1"), issued Respondent a Letter of Reprimand and placed him on five (5) years probation with terms and conditions, based on habitual intemperance in the use of alcohol or habitual substance abuse and conduct or practice which is or might be harmful or dangerous to the health of the patient or the public - habitual intemperance and reporting to work under the influence of alcohol.

B. On or about June 8, 2007, the Arizona Board, by a Consent Agreement for Letter of Reprimand (hereinafter "Arizona Agreement 2"), issued Respondent a Letter of Reprimand, based on conduct or practice that is or might be harmful or dangerous to the health of the patient or the public and gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient - failure to order a head CT scan and lumbar puncture for a patient with altered level of consciousness and acute headache.

C. The conduct resulting in the Arizona Board disciplinary actions 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(8) (being a habitual abuser of alcohol).

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly 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 C.
2. The facts in Paragraphs B and/or C.

THIRD AND FOURTH SPECIFICATIONS

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 of New York state, in that Petitioner charges:

3. The facts in Paragraphs A and/or C.
4. The facts in Paragraphs B and/or C.

DATED: Jan. 8, 2008
Albany, New York

Redacted Signature

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