



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

August 29, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Frank L. Lauro, M.D.
51 North Town Drive
Apartment 13J
Jackson, Mississippi 39211

RE: In the Matter of Frank L. Lauro, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-274) 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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

IN THE MATTER
OF
FRANK L. LAURO, M.D.

DETERMINATION
AND
ORDER

BPMC #02-274

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated July 8, 2002, were served upon the Respondent, **FRANK L. LAURO, M.D.** **KENDRICK A. SEARS, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **MR. JOHN O. RAYMOND**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on August 21, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. Although duly notified, the Respondent failed to appear.

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 cases, 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 Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivision (8) (being a habitual abuser of alcohol). A copy of the Notice of Referral Proceeding and Statement of Charges is 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 unless otherwise specified.

1. **FRANK L. LAURO, M.D.**, the Respondent, was authorized to practice medicine in New York State on September 14, 1970, by the issuance of license number 107297 by the New York State Education Department (Ex. 4).
2. On December 3, 2001, Respondent and the Mississippi State Board of Medical Licensure ("the Mississippi Board) entered into an agreement entitled "Surrender of Medical License", wherein Respondent voluntarily and unconditionally surrendered his medical license. The agreement specified that it followed a "comprehensive investigation into Respondent's habitual use of intoxicating liquors ... to the extent which affects professional competency", and that such conduct constituted grounds for disciplinary action (Ex. 5).
3. On July 10, 2002, copies of the Notice of Referral Proceeding, Statement of Charges, and a copy of the Department of Health Hearing Rules were mailed to Respondent by regular mail and by Certified Mail, Return Receipt Requested (Ex. 3). Mr. Bogan asserted at the hearing that the return receipt had been received by the Department and that it indicated that Respondent had received these documents. Respondent also returned a set of these documents to the Department two days before the scheduled hearing date (Administrative Law Judge Ex. 1), thus evincing his receipt of the documents. The Notice of Referral Proceeding specified that Respondent was required to file a written answer to the Statement of Charges with the Bureau of Adjudication no later than ten days prior to the hearing, or any allegations not so answered would be deemed admitted. Respondent was also advised in this notice that the proceedings

would be held whether or not he appeared, that requests for adjournments must be made in writing to the Bureau of Adjudication at least five days before the scheduled hearing date, that adjournments are not routinely granted, and that claims of illness would require medical documentation.

4. On July 13, 2002, Respondent was personally served with the Notice of Referral Proceeding, Statement of Charges, and a copy of the Department of Health Hearing Rules (Ex. 2).
5. At no time prior to the scheduled hearing commencement time did Respondent file an answer to the charges with, or request an adjournment from, the Bureau of Adjudication.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Mississippi Consent Order would constitute misconduct under the laws of New York State, pursuant to New York Education Law 6530(9)(b) and (d), in that the conduct would have constituted misconduct in this state, had it been committed here, under New York Education Law §6530(8) (being a habitual abuser of alcohol).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §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)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having voluntarily surrendered his license after a disciplinary action was instituted 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.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

It is noted at the outset that, although duly notified of the time and place of the hearing, Respondent did not appear, file an answer to the Charges or request an adjournment. It is noted by the Administrative Law Judge that what Respondent did do was to return to the Department one set of copies of the Notice of Hearing, Notice of Referral Proceeding and statement of charges, as well as the copy of a document that had been sent to him as a possible settlement of this matter (Administrative Law Judge Ex. 1). On the Notice of Hearing Respondent wrote that he could not attend because of "w/u for blood in urine", and on the Notice of Referral Proceeding he wrote "12/26/01 Retired". The settlement document was not acceptable to the Department because Respondent made alterations to the charges, in a copy of the Statement of Charges, to which he was required to admit as part of the settlement (the Hearing Committee did not view these documents,

but were informed that Respondent had made changes to the proposed settlement documents that were not acceptable and that there was no settlement).

Mr. Bogan represented at the hearing that he had attempted to notify Respondent by phone that the settlement documents as altered by Respondent were not acceptable and that the hearing was going to proceed, that Respondent did not answer the phone calls and that messages containing this information were left on Respondent's answering machines.

It is clear that Respondent did not request or receive an adjournment of the proceeding and did not file an answer. Furthermore, the undocumented claim that he could not attend because medical tests were being performed would not have constituted a valid ground for an adjournment even had Respondent requested an adjournment in the proper manner. The hearing properly proceeded in Respondent's absence.

As to the merits, the record in this case indicates that on December 3, 2001, Respondent and the Mississippi Board entered into an agreement wherein Respondent voluntarily and unconditionally surrendered his medical license. The agreement specified that it followed a "comprehensive investigation into Respondent's habitual use of intoxicating liquors ... to the extent which affects professional competency", and that such conduct constituted grounds for disciplinary action (Ex. 5).

The Hearing Committee determines that because Respondent voluntarily surrendered his medical license in the face of the threat of disciplinary action by the Mississippi Board, and because habitual abuse of alcohol constitutes misconduct under New York law, Respondent is guilty of professional misconduct under New York Education Law 6530(9)(b) and (d).

Inasmuch as Respondent committed misconduct under New York Law, the only issue remaining to be decided is the appropriate penalty to be imposed in this state. The

hearing was scheduled to afford Respondent an opportunity to present evidence on the issue of the appropriate penalty to be imposed, but Respondent did not avail himself of this opportunity. Accordingly, there is no evidence in mitigation, such as evidence of remorse, treatment and rehabilitation, or other factors that might weigh against the imposition of the sanction of revocation. As far as this record reveals, Respondent has no intention to deal with his alcohol problem, and revocation of his license is necessary to protect New York residents against the potential dangers associated with his practice of medicine in this state.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **FRANK L. LAURO, M.D.** is **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Syracuse, New York

August 21, 2002


KENDRICK A. SEARS, M.D.
Chairperson

ERNST A. KOPP, M.D.
MR. JOHN O. RAYMOND

APPENDIX 1

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

IN THE MATTER
OF
FRANK L. LAURO, M.D.
CO-02-02-0711-A

NOTICE OF
REFERRAL
PROCEEDING

TO: FRANK L. LAURO, M.D.
51 North Town Drive
Apt. 13J
Jackson, MS 39211

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 21st day of August 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, 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. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 12, 2002.

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 August 12, 2002, 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.

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

July 8, 2002



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	STATEMENT
OF	OF
FRANK L. LAURO, M.D.	CHARGES
CO-02-02-0711-A	

FRANK L. LAURO, M.D., the Respondent, was authorized to practice medicine in New York state on September 14, 1970, by the issuance of license number 107297 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 20, 2001, the Mississippi State Board of Medical Licensure (hereinafter "Mississippi Board"), by a Surrender of Medical License (hereinafter "Mississippi Surrender"), accepted the voluntary surrender of Respondent's medical license, based on habitual use of intoxicating liquors, or any beverage to the extent which affects professional competency.

B. The conduct resulting in the Mississippi 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(8) (being a habitual abuser of alcohol).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice of professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the findings 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 B.

SECOND SPECIFICATION

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

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

DATED: *July 8*, 2002
Albany, New York


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