



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

August 22, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy J. Mahar, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2503
Albany, New York 12237

Carol C. Bosholm, M.D.
511 Sixth Avenue West
Hendersonville, North Carolina 28739

RE: In the Matter of Carol C. Bosholm, M.D.

Dear Mr. Mahar and Dr. Bosholm:

Enclosed please find the Determination and Order (No. BPMC-97-203) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 vertical line and the letters "nm".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:erc
Enclosure

IN THE MATTER
OF
CAROL C. BOSHOLM, M.D.

DETERMINATION
AND
ORDER

BPMC-97-203

OLIVE M. JACOB, Chairperson, **RAVINDER MAMTANI, M.D.** and **MARGERY W. SMITH**, duly designated members of the State Board for Professional Medical Conduct appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY ARMON, ESQ.**, served as Administrative Officer for the Hearing Committee. After consideration of the entire record, the Hearing Committee submits this Determination.

SUMMARY OF PROCEEDINGS

Notice of Hearing and Statement of Charges:	May 2, 1997
Dates of Hearing:	June 20, 1997
Department of Health appeared by:	Henry M. Greenberg, General Counsel NYS Department of Health
	BY: Timothy J. Mahar, Esq. Assistant Counsel NYS Department of Health Corning Tower Albany, New York 12237
Respondent appeared :	Pro Se
Witnesses for the Department of Health:	None

Witnesses for the Respondent:

Carol C. Bosholm, M.D (Respondent)

Deliberations held:

June 20, 1997

Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. All Hearing Committee findings were unanimous unless otherwise specified.

NOTE: Petitioner's Exhibits are designated by Numbers.

Respondent's exhibits are designated by Letters.

T = Transcript

A copy of the Statement of Charges (Ex. 1) is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on October 20, 1994 by the issuance of license number 197569 by the New York State Education Department. (Ex.2)
2. On or about May 23, 1994, Respondent submitted an Application for License and First Registration to the New York State Education Department. She answered "no" to the following question on the application:

"Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" (Ex. 2)

3. Respondent enrolled in the first year of a three year Family Practice Residency Program with the Mountainside Hospital in Montclair, New Jersey in 1989. Pursuant to the terms of the Resident (House Officer) Agreement, the duration of the first program year was to be from July 1, 1989 to June 30, 1990. (Ex. 4)

4. During the course of the first year of the residency program, the Respondent was observed to have certain emotional difficulties which affected her ability to satisfactorily meet her program requirements. In January, 1990, Respondent was directed to enter into outpatient psychotherapy as a condition of continuing in the program. (Ex. 5, pp. 1-5)

5. Respondent consulted a psychotherapist as directed on several occasions, but in or about May, 1990, the psychotherapist determined to terminate their sessions based on his conclusion that Respondent was untreatable because of her denial of any problem. (Ex. 5, p. 9)

6. Respondent met with the Director of the residency program on May 4, 1990, at which time she was advised that she would not be permitted to continue in the program as of July 1, 1990 and would therefore not be permitted to continue into its' second year, and that she would not receive credit for her participation in the first year of the program. (Ex. 5, pp. 10-12; Ex. 6, p. 57)

7. Respondent participated in the residency program until the end of the first year on June 30, 1990. (T. 33)

8. Respondent successfully completed a Transitional Internship Training Program at the Los Angeles County- University of Southern California Medical Center during the period of July 1, 1990 through June 30, 1991. She initiated training as a resident in Internal Medicine at Staten Island University Hospital on March 1, 1992 and successfully completed her training on August 30, 1994. Respondent became Board certified in Internal Medicine in 1994. (Ex. B)

9. On or about August 5, 1996, the State Board of Medical Examiners of South Carolina (South Carolina Board) found, subsequent to an adjudicative hearing, that Respondent committed acts of professional misconduct and made the following findings:

a. Respondent submitted an application for a medical license in South Carolina on or about October 24, 1996 in which she represented that she had never been hospitalized or treated for any mental or emotional illness when, in fact, Respondent had been hospitalized for purposes of a psychiatric evaluation at the Pennsylvania Hospital in Philadelphia, Pennsylvania from on or about October 30, 1989 through November 10, 1989;

b. Respondent also represented on the same application for a medical license that she had never discontinued the practice of medicine for any reason for one month or more when, in fact, the Respondent had not engaged in the practice of medicine during the period of June 30, 1991 through March 1, 1992.

c. Respondent submitted an application for staff privileges at Beaufort Memorial Hospital in Beaufort, South Carolina on or about October 26, 1994 in which she represented that she had not been hospitalized within the previous five years when, in fact, Respondent had been hospitalized at the Pennsylvania Hospital in Philadelphia, Pennsylvania from on or about October 30, 1989 through November 10, 1989. (Ex. 3)

10. The South Carolina Board, pursuant to a Supplemental Final Order dated February 24, 1997, imposed a penalty for such acts of professional misconduct consisting of a public reprimand and an indefinite suspension of her medical license with reinstatement upon payment of a civil fine of \$5,000.00. (Ex. 3)

CONCLUSIONS OF LAW and DISCUSSION

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concluded that the following Factual Allegations should be **SUSTAINED**. The citations in parentheses refer to the Findings of Fact which support each Factual Allegation:

- Paragraph 3: (9);
- Paragraph 4: (9);
- Paragraph 5: (10).

The Hearing Committee determined that all other Factual Allegations should **NOT BE SUSTAINED**.

The Hearing Committee concluded that the following Specifications should be **SUSTAINED** based upon the Factual Allegations which were sustained:

Second through Sixth Specifications.

The Hearing Committee determined that all other Specifications should **NOT BE SUSTAINED**.

Respondent was charged with multiple Specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of actions which constitute professional misconduct, but does not provide definitions of such categories of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for certain types of professional misconduct.

The following definition was utilized by the Hearing Committee during its deliberations:

Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact made in connection with the practice of medicine.

The Committee relied upon this definition in considering the Specifications of professional misconduct.

The Committee sustained Factual Allegations 3., 4. and 5. and concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Respondent had been found guilty of improper professional practice or professional misconduct and had had disciplinary action taken against her medical license by a duly authorized professional disciplinary agency of another state. The basis for the South Carolina Board's action was conduct by the Respondent which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law Sections 6530(1) [obtaining the license fraudulently]; 6530(2) [practicing the profession fraudulently]; 6530(20) [conduct in the practice of medicine evidencing moral unfitness to practice] and 6530(21) [willfully making or filing a false report]. The Committee therefore determined to sustain the Fifth and Sixth Specifications.

The Committee did not sustain Factual Allegations 1. and/or 2. because it concluded that the Respondent did not have her residency program terminated. It also determined that Respondent did not resign or withdraw from the Mountainside Residency Program. The Committee felt that there was a clear distinction between a termination from the program and a non-renewal of an appointment to the program. It noted that the Resident Agreement (Ex. 4) was for a one year duration and that the Respondent did, in fact, continue to participate in the residency program through the completion of the first year. The fact that she received no credit for her first year and was not permitted to continue into a second year was not viewed as a termination from the program.

The Committee also concluded that the Respondent did not withdraw or resign from the residency program. The record is clear that she fully completed the first year, albeit unsuccessfully. Respondent testified that she had advised the Program Director during the course of the first year that she intended to leave after the first year. However, she further testified that she did not complete a formal letter of resignation. The Committee regarded the one year Resident Agreement as evidence that each year of the residency was considered individually and a failure to continue with the second year was not a termination or withdrawal from the program.

DETERMINATION AS TO PENALTY

The Committee determined under the particular circumstances of this case that no penalty should be imposed on Respondent in addition to that imposed by the South Carolina Board. It considered that Board's action to be more than sufficient for what were seen to be minor misrepresentations to questions posed by the South Carolina license application which were not even asked on the New York application. It was also noted that the application for hospital privileges which Respondent submitted about October 26, 1994 asked whether she had been hospitalized within the previous five years; her hospitalization which was at issue had

occurred over four years and eleven months earlier. Had the application been submitted only a few days later, her response would have been accurate.

The Committee was shocked by the Department's suggestion that the appropriate penalty would be a revocation of Respondent's New York medical license. It was particularly critical of the dogmatic approach that any misrepresentation on a license application justifies a revocation. The members of the Committee were well aware of the seriousness of an allegation of providing false information on an application for a license or hospital privileges; however they felt that the facts of this case clearly distinguished it from instances in which the false information was intended to conceal criminal conduct or similar anti-social behavior. It believed that the Respondent's answers on the South Carolina application could not have resulted in patient harm. The Department specifically pointed out that Respondent was not being charged with practicing while impaired and she provided several references which attested to the absence of any impairment and to her professional competency.

The Committee noted that, following her completion of the first year of the New Jersey program, Respondent had successfully completed her residency elsewhere and had become Board certified in Internal Medicine. It considered Respondent's testimony, at this proceeding and at the South Carolina hearing, that some of her emotional difficulties during the New Jersey residency were the result of her marriage to an abusive spouse and the sudden death of a parent. The members of the Committee were disturbed that the New Jersey program undertook no evaluation of the Respondent's fitness and only referred her to a psychiatrist while apparently offering no further treatment.

The Hearing Committee considered Respondent's emotional difficulties during a period of at least seven years ago to be temporary and not reflective of her current fitness as a physician. It viewed the relatively small penalty imposed by the South Carolina Board as an indication that the misrepresentations on the South Carolina license and hospital privileges applications were not deemed to be serious ones. The Committee unanimously concluded that to impose any additional penalty would be both unwarranted and an injustice.

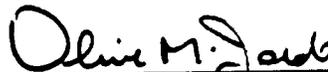
ORDER

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

1. The Second, Third and Fourth Specifications, as they relate only to Factual Allegations 3., 4. and 5, are **SUSTAINED**; and
2. The Fifth and Sixth Specifications are **SUSTAINED**; and
3. All other Specifications are **NOT SUSTAINED** and are hereby **DISMISSED**; and
4. No penalty is imposed against Respondent's license to practice medicine in New York.
5. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

DATED: Albany, New York

8/19, 1997



OLIVE M. JACOB, Chairperson

**RAVINDER MAMTANI, M.D.
MARGERY W. SMITH, M.D.**

TO: Timothy J. Mahar, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Carol C. Bosholm, M.D.
511 Sixth Avenue West
Hendersonville, North Carolina 28739

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

-----X

IN THE MATTER : STATEMENT
OF : OF
CAROL C. BOSHOLM, M.D. : CHARGES

-----X

CAROL C. BOSHOLM, M.D., the Respondent, was authorized to practice medicine in New York State on October 20, 1994 by the issuance of license number 197569 by the New York State Education Department.

FACTUAL ALLEGATIONS

1. On or about June 7, 1994, Respondent filed an Application for License and First Registration for a medical license (application) with the New York State Education Department, dated May 23, 1994. Respondent answered "No" to the application question,

Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?

when, in fact, Respondent had withdrawn from the Mountainside Family Practice Residency Program in Montclair, New Jersey in or about June, 1990 with the knowledge that she would not be permitted to enter the second year of the residency program (PGY II), would not be permitted to

re-enroll in the residency program, and would not receive credit for the past year in the program. Further, Respondent's professional training and/or employment in the Mountainside Hospital had been terminated.

2. Respondent knowingly gave a false response on her New York application, dated May 23, 1994, concerning her separation from a professional training program.
3. On or about August 5, 1996, the State Board of Medical Examiners of South Carolina (South Carolina Board) found, following a hearing, that the Respondent committed acts of professional misconduct. Specifically, the South Carolina Board made the following findings:
 - a. On or about October 24, 1994, Respondent submitted an application in South Carolina for a medical license in which she represented that she had never been hospitalized or treated for any mental or emotional illness; when, in fact, the Respondent had been hospitalized for purposes of psychiatric evaluation at the Pennsylvania Hospital in Philadelphia from on or about October 30, 1989 through November 10, 1989.
 - b. On the same application for a medical license, Respondent represented that she had never discontinued the practice of medicine for any reason for one month or more; when, in fact, the Respondent had not engaged

in the practice of medicine during the period from June 30, 1991 through March 1, 1992.

- c. On or about October 26, 1994, Respondent submitted an application for staff privileges at Beaufort Memorial Hospital, located in Beaufort, South Carolina in which she represented that she had not been hospitalized within the past five years; when, in fact, the Respondent had been hospitalized at the Pennsylvania Hospital in Philadelphia from on or about October 30, 1989 through November 10, 1989.
4. The conduct upon which the South Carolina Board found Respondent had committed professional misconduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law § 6530(1) [obtaining a license fraudulently]; and/or N.Y. Educ. Law § 6530(2) [practicing the profession fraudulently]; and/or N.Y. Educ. Law § 6530(20) [engaging in conduct in the practice of medicine which evidences moral unfitness to practice medicine]; and/or N.Y. Educ. Law § 6530(21) [willfully making or filing a false report].
5. The South Carolina Board pursuant to a supplemental order dated February 24, 1997, imposed a penalty on Respondent for the conduct set forth in paragraph four, above. The penalty consisted of a public reprimand and an indefinite suspension of her medical license with reinstatement upon payment of a \$5,000.00 fine.

SPECIFICATION OF CHARGES

**FIRST SPECIFICATION
OBTAINING LICENSE FRAUDULENTLY**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(1) [McKinney Supp. 1997] by reason of having obtained her New York medical license fraudulently, in that Petitioner charges:

1. The facts in Paragraphs 1 and 2.

**SECOND SPECIFICATION
FRAUDULENT PRACTICE**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(2) [McKinney Supp. 1997] by reason of having practiced the profession fraudulently, in that Petitioner charges:

2. The facts in Paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5.

THIRD SPECIFICATION

MORAL UNFITNESS

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(20) [McKinney Supp. 1997] by having engaged in conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

3. The facts in Paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5.

FOURTH SPECIFICATION

FILING A FALSE REPORT

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(21) [McKinney Supp. 1997] by reason of having willfully made or filed a false report, in that Petitioner charges:

4. The facts in Paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5.

FIFTH SPECIFICATION
FINDING OF MISCONDUCT BY OTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(9)(b) by reason of having been found guilty of improper professional practice or Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(1) [McKinney Supp. 1997] by reason of having obtained her New York medical license fraudulently, in that Petitioner charges: professional misconduct by a duly authorized 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:

5. The facts in Paragraphs 3 and 4.

SIXTH SPECIFICATION
DISCIPLINE BY OTHER STATE

In the alternative, Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(9)(d) by reason of having been disciplined 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 Petitioner charges:

6. The facts in Paragraphs 3, 4 and 5.

DATED: *May 2*, 1997
Albany, New York

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