

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

COPY

IN THE MATTER
OF
JEFFREY KOPELSON, M.D.

DETERMINATION
AND
ORDER

BPMC-97-250

A Notice of Referral Proceedings and Statement of Charges, both dated August 5, 1997, were served upon the Respondent, **JEFFREY KOPELSON, M.D.**. **STEPHEN W. HORNYAK, M.D.**, Chairperson, **AARON B. STEVENS, M.D.** and **JAMES P. MILSTEIN, ESQ.**, 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. **MICHAEL P. McDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 17, 1997, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **KIMBERLY A. O'BRIEN, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **GLEASON, DUNN, WALSH & O'SHEA**, 102 Hackett Blvd., Albany, New York 12209 by **THOMAS F. GLEASON, ESQ.**, of Counsel.

WITNESSES

For the Petitioner:

NONE

For the Respondent:

1) Maddipoti J. Chouchdry, M.D. (by telephone)

2) Jeffrey Kopelson, the Respondent

[REDACTED]

[REDACTED]

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 case, 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 Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent 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 stated.

1. **JEFFREY KOPELSON, M.D.**, the Respondent, was authorized to practice medicine in New York State on March 22, 1988 by the issuance of license number 173982 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department at an address of Country Medical, 221 Clock Tower Commons, Brewster, New York 10509 (Pet's Exs. 1 and 2).

2. By Probation Agreement, dated January 24, 1983, the Missouri State Board of Registration for the Healing Arts, (hereinafter, " Missouri Board"), agreed to stay the surrender of the Respondent's license provided that he continue treatment for a problem with controlled substances.

He was placed on indefinite probation, given prescribing and practice limitations, and required to submit to random urine tests (Pet's Ex. 3).

3. The Respondent's Missouri license was reinstated without restriction on June 7, 1985 (Resp's. Ex. B).

4. By Administrative Action and Order of Denying Licensure, filed September 3, 1992, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, Board of Medical Examiners, (hereinafter, "New Jersey Board"), issued a finding that the Respondent had violated the law of New Jersey by deliberately attempting to mislead on his license application when he "deliberately failed to indicate that an action had been taken against his license in another state, that he had been addicted to a controlled dangerous substance, and that he had been treated for psychiatric problems."

The Respondent was denied a license to practice medicine and surgery in the State of New Jersey (Pet's. Ex. 4).

5. By Complaint and Settlement Agreement, effective February 21, 1997, the "Missouri Board" issued findings that the Respondent had violated the law of Missouri by answering "No" to the question on the Missouri license renewal application, which asked whether Respondent had been denied a license to practice medicine . . . by a U.S. State and or a Canadian Provincial Agency.

The Respondent was placed on probation by the Missouri Board for a period of one year (Pet's. Ex. 3 and 4).

6. In a Determination, dated March 4, 1988, the New York State Education Department, Office of Professional Discipline, State Board for Medicine, (hereinafter, New York State Education Department) reviewed the respondent's prior drug addiction history and the "Missouri Boards" 1983 action, and determined that "based on his demeanor before us and his history since his dependency, that the applicant has sufficiently fulfilled the moral character requirement and we unanimously determine that, solely with respect to said moral character requirement, the application be granted." (Resp's. Ex. A)

7. By letter, dated August 23, 1995, Kenneth J. Spooner, Principle Investigator, Office of Professional Medical Conduct, OPMC, advised the Respondent,
"I am responding to your letter of August 21, 1995 in which you requested copies of the file relating to this Office's investigation of disciplinary action taken against your license to practice medicine in Missouri and the denial of your application for licensure in New Jersey. This investigation was presented to an investigation committee of the New York State Board for Professional Medical Conduct which concluded that disciplinary action against your New York State license was not warranted. The investigation was therefore closed." (Resp's. Ex. A)

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous unless otherwise specified)

FIRST AND SECOND SPECIFICATION

GUILTY OF MISCONDUCT IN ANOTHER STATE

The Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(b)(McKinney Supp. 1997) in that he was 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 law of New York State.

VOTE: SUSTAINED (3-0)

THIRD, FOURTH & FIFTH SPECIFICATIONS

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d)(McKinney Supp. 1997) in that he had disciplinary action taken against his license 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)

DETERMINATION OF THE HEARING COMMITTEE

First of all, the Hearing Committee rejects the Respondent's contention that this Committee "is precluded or otherwise estopped from hearing claims and/or issues in this matter" due to prior proceedings and determinations in Missouri, New Jersey and New York.

The Hearing Committee has voted unanimously (3-0) to **SUSTAIN** all of the Specifications against the Respondent. However, after reviewing the entire record of this case to determine an appropriate penalty, the Hearing Committee believes that there are mitigating circumstances which should be taken into consideration.

The Respondent has been drug and alcohol free for the past seven years. In 1990 he participated in a thirty day inpatient treatment program for chemical dependency at Conifer Park, Scotia, New York, and has attended Alcoholics Anonymous meetings ever since. He currently attends AA meetings three times a week.

Two members of AA, one who is the Respondent's AA sponsor, and the other for whom the Respondent is the AA sponsor, testified very positively on his behalf.

The Hearing Committee was very impressed by the Respondent's candor and sincerity, his admission of past mistakes and his efforts to rehabilitate himself.

The Respondent is a relatively young man and the Hearing Committee feels that he still has the ability to make a positive contribution to his profession.

Based on a review of the entire record, the Hearing Committee determines that an appropriate penalty in this case would be a two (2) year **SUSPENSION, SUSPENSION STAYED**, with the Respondent placed on probation under the terms hereinafter set forth in the **ORDER**.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for a period of two (2) years, **SUSPENSION STAYED** subject to the following conditions. Unless otherwise indicated, these conditions shall remain in effect for a period of two (2) years after the effective date of this Order.
2. The Respondent shall remain drug/alcohol free.
3. The Respondent will be monitored by a qualified health care professional, (sobriety monitor), selected by the Respondent, and approved by the Director of the Office of Professional Medical Conduct (OPMC).
 - a) The sobriety monitor will not be a close personal friend or relative of the Respondent. The sobriety monitor will supervise the Respondent's compliance with the terms set forth in the Order.
 - b) The Respondent shall submit the name of a proposed successor within seven (7) days of learning that the approved sobriety monitor is no longer willing or able to serve.
 - c) The Respondent shall ensure that the sobriety monitor is familiar with Respondent's drug/alcohol dependency and with the terms of this Order. The sobriety monitor shall report any deviation from compliance with the terms of this Order to OPMC.

- d) The Respondent shall submit, at the request of the sobriety monitor, to random, unannounced, observed urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis and shall be performed at a frequency of no less than once a month for the first 12 months of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC. The Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. The sobriety monitor shall report to OPMC within 24 hours if a test is refused or delayed by the Respondent or a test is positive for any unauthorized substance.
 - e) The sobriety monitor shall submit quarterly reports to OPMC certifying the Respondent's compliance with the terms of this ORDER. These reports are to include
 - a) the results of all drug/alcohol monitoring tests performed within the quarter; and
 - b) an assessment of self-help group attendance (e.g. AA/NA/Caduceus, etc.), 12 step progress, etc.
4. The Respondent shall continue to attend Alcoholic Anonymous meetings at least three (3) times per week.
5. Failure to comply with any of the conditions above will result in automatic reinstatement of the two year suspension of the Respondent's license to practice medicine upon notice to the Respondent.

6. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Staten Island, New York
October 7, 1997



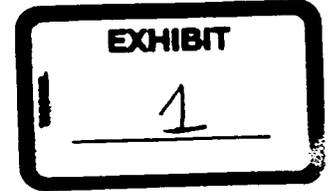
STEPHEN W. HORNYAK, M.D.
Chairman

AARON B. STEVENS, M.D.
JAMES P. MILSTEIN, ESQ.

(719)

APPENDIX I

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



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IN THE MATTER : NOTICE OF
OF : REFERRAL
JEFFREY KOPELSON, M.D. : PROCEEDING

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TO: Jeffrey Kopelson, M.D.
Country Medical
221 Clock Tower Commons
Brewster, New York 10509

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 17th day of September, 1997 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 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, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 7, 1997.

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 or 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 September 7, 1997 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
August 3, 1997

Peter D. Van Buren

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

Inquiries should be addressed to:

Kimberly A. O'Brien
Senior Attorney
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2503
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
JEFFREY KOPELSON, M.D. : CHARGES

-----X

JEFFREY KOPELSON, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 22, 1988 by the issuance of license number 173982 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine with a registration address of Country Medical, 221 Clock Tower Commons, Brewster, New York, 10509.

FACTUAL ALLEGATIONS

1. By Probation Agreement dated January 24, 1983, the Missouri State Board of Registration for the Healing Arts agreed to stay the surrender of Respondent's license provided that he continue treatment for a problem with a controlled dangerous substance. Respondent was placed on indefinite probation, given prescribing and practice limitations, and required to submit to random urine tests.

2. The conduct of which Respondent was found guilty in Missouri would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely within the meaning of New York Education Law §6530(8) (McKinney

Supp. 1997) (being dependent on or habitual user of narcotics and alcohol).

3. By Administrative Action and Order of Denial of Licensure filed September 3, 1992, the State of New Jersey Department of Law & Public Safety Division of Consumer Affairs Board of Medical Examiners issued a finding that Respondent had violated the law of New Jersey by lying on his license application when he "deliberately failed to indicate that an action had been taken against his license in another state, that he had been addicted to a controlled dangerous substance, and that he had been treated for psychiatric problems." Respondent was denied a license to practice medicine and surgery in the State of New Jersey.

4. The conduct of which Respondent was found guilty in New Jersey would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely within the meaning of New York Education Law §6530(2) (McKinney Supp. 1997) (fraudulent practice) and within the meaning of New York Education Law §6530(20) (McKinney Supp. 1997) (moral unfitness) and within the meaning of New York Education Law §6530(21) (McKinney Supp. 1997) (willfully filing a false report).

5. By Complaint and Settlement Agreement effective February 21, 1997, the Missouri State Board of Registration for the Healing Arts issued findings that Respondent had violated the law of Missouri by answering "No" to the question on the license

application, which asked whether Respondent had been denied a license to practice medicine. Respondent was placed on probation for a period of one year.

6. The conduct of which Respondent was found guilty in Missouri would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely within the meaning of New York Education Law §6530(2) (McKinney Supp. 1997) (fraudulent practice) and within the meaning of New York Education Law §6530(20) (McKinney Supp. 1997) (moral unfitness) and within the meaning of New York Education Law §6530(21) (McKinney Supp. 1997) (willfully filing a false report).

SPECIFICATIONS OF MISCONDUCT

FIRST & SECOND SPECIFICATION

GUILTY OF MISCONDUCT IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(b) (McKinney Supp. 1997) in that he was 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, in that Petitioner charges:

1. The facts of paragraphs 3 and/or 4.
2. The facts of paragraphs 5 and/or 6.

THIRD, FOURTH & FIFTH SPECIFICATIONS

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d) (McKinney Supp. 1997) in that he had disciplinary action taken against his license 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 of paragraphs 1 and/or 2.
4. The facts of paragraphs 3 and/or 4.
5. The facts of paragraphs 5 and/or 6.

DATED: *August 5, 1997*
Albany, New York

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