



Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

C. Maynard Guest, M.D.
Executive Secretary

January 26, 1994

Mr. Robert Bentley
Director
Division of Professional Licensing Services
New York State Education Department
Empire State Plaza-Cultural Education Center
Albany, New York 12230

RE: License No. 093125
Effective Date: 12/31/94

Dear Mr. Bentley:

Enclosed please find Order #93-206 of the New York State Board for Professional Medical Conduct concerning Dr. Earl Caldwell.

Neither the Department of Health nor the Respondent has requested an administrative review in this matter. The failure to request a review exhausts the administrative remedies in this matter.

Sincerely,

C. Maynard Guest, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

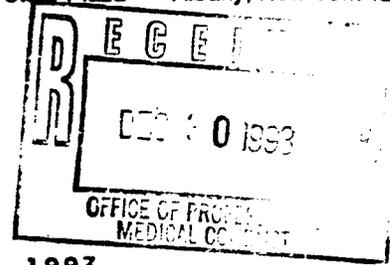


STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner



December 24, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Earl Caldwell, M.D.
3380 Summit Avenue
Highland Park, Illinois 60035

James Caldwell, Esq.
120 West Madison Street
Suite 600
Chicago, Illinois 60602

Frederick Zimmer, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

RE: In the Matter of Earl Caldwell, M.D.

Dear Dr. Caldwell, Mr. Caldwell and Mr. Zimmer:

Enclosed please find the Determination and Order (No. BPMC-93-206) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 than 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 (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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 all action 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.

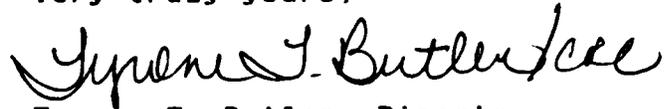
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X
IN THE MATTER ;
OF ;
EARL N. CALDWELL, M.D. ;
-----X

DETERMINATION
AND
ORDER
OF THE
HEARING COMMITTEE
ORDER NO.
BPMC-93-206

A Notice of Hearing and Statement of Charges dated October 7, 1993 were served upon EARL N. CALDWELL, M.D. (hereinafter referred to as "Respondent"). The undersigned Hearing Committee consisting of DENISE BOLAN, R.P.A., Chairperson, HOWARD SOHNEN, M.D. and BERNARD POLLARA, M.D., was duly designated and appointed by the State Board for Professional Medical Conduct. JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as Administrative Officer.

A hearing was conducted on December 1, 1993 pursuant to §230 (10)(e) of the Public Health Law and §301-307 and §401 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of Section 6530 of the New York Education Law by Respondent. The hearing was held at the Justice Building, Court Room 2, Empire State Plaza, Albany, New York.

The Department of Health appeared by Frederick Zimmer, Esq., of counsel to Peter J. Millock, Esq., General Counsel. Respondent neither appeared in person nor by counsel. Respondent's counsel submitted a letter which was not introduced into evidence but will be forwarded as part of the record herein. Evidence was received and a transcript of this proceeding was

made.

STATEMENT OF CASE

The proceeding was brought pursuant to Public Health Law §230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of New York Education Law, §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 the expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon a licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to New York Education Law §6530(9)(b) and (d) based upon the fact that he has been found guilty of professional misconduct by the 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 New York State Law. Respondent is also charged with having committed professional misconduct by reason of his having had disciplinary action taken against his license to practice medicine by the duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action involving this license would, if committed in New York State constitute professional misconduct

under New York State law. The charges are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges which is attached to this Determination and Order (Appendix I).

SIGNIFICANT LEGAL RULINGS

The Administrative Law Judge found that the State had made service upon Respondent pursuant to statute and that therefore, jurisdiction of Respondent had been established.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. The findings are derived from evidence found persuasive by the Hearing Committee. Conflicting evidence, if any was considered and rejected.

1. Respondent was authorized to practice medicine in New York State on October 14, 1964 by the issuance of license number 093125 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. He was last registered for the period which ended on December 31, 1985.

2. The Medical Disciplinary Board of the Department of Professional Regulation of the State of Illinois (hereinafter the "Illinois Board"), by Findings of Fact, Conclusions of Law and Recommendations to the Director dated February 5, 1992, adopted and made a part of its Findings of Fact, the Report and

Recommendation of the Hearing Officer dated November 27, 1991 pertaining to Respondent. The Illinois Board found Respondent guilty of violating Illinois law, as is set forth below.

3. The Illinois Board's Findings of Fact, Conclusions of Law and Recommendation were ultimately adopted by the Director of the Illinois Department of Professional Regulation by an Order Denying Motion for Rehearing, dated May 13, 1992. Respondent was placed on probation for a period of five years, his controlled substance license was revoked and he was fined in the amount of Twenty Thousand Dollars (20,000.00).

4. The Illinois Board found Respondent guilty of violating several Illinois statutes including the Illinois Medical Practice Act of 1923, Illinois Revised Statutes (1985), Chapter 111, paragraph 4433 (17) (prescribing controlled substances for other than therapeutic purposes), the Illinois Medical Practice Act of 1987, Illinois Revised Statutes (1987), Chapter 111, paragraph 4400-22 (a) (17) (prescribing controlled substances for other than medically accepted therapeutic purposes), the Illinois Medical Practice Act of 1923, Illinois Revised Statutes (1985), Chapter 111, paragraph 4433 (25) (professional incompetence as manifested by poor standards of care), the Illinois Medical Practice Act of 1987, Illinois Revised Statutes (1987), Chapter 111, paragraph 4400-22 (a) (26) (pattern of practice which demonstrates incompetence to practice under the Act), Illinois Medical Practice Act of 1923, Illinois Revised Statutes (1985), Chapter 111, paragraph 4433 (4) (gross or repeated malpractice resulting in

serious injury to a patient), the Illinois Medical Practice Act of 1987, Illinois Revised Statutes (1987), Chapter 111, paragraph 4400-22 (a) (4) (gross negligence in practice under the Act), the Illinois Controlled Substances Act, Illinois Revised Statutes (1987), Chapter 56 1/2, paragraph 1312 (h) (failure to properly prescribe controlled substances, to wit; the issuance of an order purporting to be a prescription for controlled substances to an individual, not in the regular course of professional treatment, research or an authorized Methadone program, which is intended to and is of a quantity to maintain that individual's or any other individual's addiction, habituation, customary use, dependency or diversion of that controlled substance).

5. The conduct upon which the Illinois Board found Respondent guilty included, among other things, Respondent's continual prescription of controlled substances for patient C.B. during a period from on or about February 10, 1986 to and including September 24, 1990, when he should have known that C.B. was a narcotic dependent person.

6. Said prescriptions included controlled substances such as Meproamate, Fastin, Darvocet N-100, Tylenol #4, Phenobarbital, Dalmane and Xanax.

7. The quantities of controlled substances prescribed, particularly the Meproamate and Darvocet, were sufficient to maintain C.B.'s physical and psychological addiction or dependence on them (Hearing Officer's Findings 38-50, pgs. 14-18).

Respondent's treatment of C.B. caused her to become dependent on

controlled substances.

8. The Illinois Board found that the record indicated that in 1989 and 1990, C.B. saw Respondent approximately once every two weeks. On each visit, Respondent gave C.B. prescriptions for controlled substances, usually Darvocet and Meproamate. These prescriptions generally allowed one refill and would last one month if taken properly, however, C.B. would ingest the pills in two weeks and return for a new prescription.

9. Eventually, Respondent added Phenobarbital to the mix and the result was C.B.'s hospitalization for a drug overdose (Hearing Officer's Additional Findings, pgs. 23-24).

10. The Illinois Board stated that on April 12, 1990, C.B. was admitted to St. Francis Hospital in Blue Island, Illinois, for a drug overdose. Blood tests were positive for Darvocet, Meproamate and Phenobarbital.

11. The Illinois Board found that Respondent's issuance of prescriptions for controlled substances to C.B. constituted recklessness and a disregard for her safety. The Illinois Board also found that Respondent's continual issuance of prescriptions for controlled substances for C.B. constituted a pattern and practice which demonstrated Respondent's incompetence to practice medicine (Hearing Officer's Findings 46-53, pgs. 18-19).

12. The conduct upon which the Illinois Board found Respondent guilty would if committed in New York State, constitute professional misconduct under N.Y.Educ. Law 6530(3) (McKinney Supp. 1993) (practicing the profession with negligence

on more than one occasion) and/or N.Y. Educ. Law 6530(4) (McKinney Supp. 1993 (practicing the profession with gross negligence on a particular occasion) and/or N.Y. Educ. Law 6530(5) (McKinney Supp. 1993) (practicing the profession with incompetence on more than one occasion) and/or N.Y. Educ. Law 6530(6) (McKinney Supp. 1993) (practicing the profession with gross incompetence).

CONCLUSIONS

The State has satisfied its burden of proof. The State has proven that Respondent has been found guilty of professional misconduct and disciplined for misconduct by the Illinois Board. He was placed on probation and subjected to a fine of \$20,000 by the Illinois authorities. The Committee is convinced that Respondent has committed conduct which would not be tolerated by a physician in this state including gross negligence, gross incompetence and prescribing controlled substances for other than medical reasons. Given these facts, there can be no other sanction but revocation.

ORDER

Based upon the foregoing it is hereby ORDERED that,

1. The specifications of professional misconduct contained in the Statement of Charges in this matter be SUSTAINED; and

2. The license of Respondent to practice medicine in this state be **REVOKED**.

DATED: Albany, New York

December 16, 1993

Denise Bolan RPA-C
DENISE BOLAN, R.P.A.
Chairperson

HOWARD SOHNEN, M.D.
BERNARD POLLARA, M.D.

TO: Frederick Zimmer, Esq.
Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower
Albany, N.Y.

Earl Caldwell, M.D.
3380 Summit Ave.
Highland Park, Illinois 60035

James Caldwell, Esq.
120 West Madison Street
Suite 600
Chicago Illinois 60602

APPENDIX I

JAMES EDWARD CALDWELL

ATTORNEY AT LAW

120 WEST MADISON STREET

SUITE 600

CHICAGO, ILLINOIS 60602

TEL: (312) 368-1788

FAX: (312) 368-1998

November 30, 1993

Mr. Jonathan Brandis
Administrative Law Judge
State of New York
Department of Health
Governor Nelson A. Rockefeller Plaza
Albany, New York 12237

RE: EARL N. CALDWELL, M. D.
NOTICE OF REFERRAL PROCEEDING

Dear Judge Brandis:

As discussed today in a three way telephone conversation with Frederick Zimmer, Assistant Counsel, the undersigned represents the Respondent Dr. Caldwell and in that connection duly filed a timely appeal of the decision of the Illinois Department of Professional Regulation (DPR) against Dr. Caldwell in the case of EARL N. CALDWELL, M. D., Plaintiff vs. DEPARTMENT OF PROFESSIONAL REGULATION (92 CHANCERY 5807).

The aforementioned appeal is currently pending adjudication by the Circuit Court of Cook County, Illinois.

Sincerely,


JAMES E. CALDWELL
A.C.

JEC/db

LETTER FAXED

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: EARL N. CALDWELL, M.D. : PROCEEDING
: -----X

TO: EARL N. CALDWELL, M.D.
3380 Summit Avenue
Highland Park, Illinois 60037

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 1st day of December, 1993 at 1:15 p.m. in the afternoon of that day at NYS Department of Health, Bureau of Adjudication, Room 2509, Corning Tower, Empire State Plaza, Albany, New York 12237.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before November 22, 1993.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address

indicated above on or before November 22, 1993 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 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
November 1, 1993



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

Inquiries should be addressed to:

Frederick Zimmer
Associate Counsel
(518) 474-8266

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

-----X
IN THE MATTER : STATEMENT
OF : OF
EARL N. CALDWELL, : CHARGES
Respondent :
-----X

EARL N. CALDWELL, M.D., the Respondent, was authorized to practice medicine in New York State on October 14, 1964 by the issuance of license number 093125 by the New York State Education Department. Respondent was last registered with the New York State Education Department to practice medicine in New York State for the period which ended on December 31, 1985 and is not currently registered to practice medicine in New York State.

FACTUAL ALLEGATIONS

A. The Medical Disciplinary Board of the Department of Professional Regulation of the State of Illinois (hereinafter the "Illinois Board"), by Findings of Fact, Conclusions of Law and Recommendation to the Director dated February 5, 1992, adopted and made a part of its Findings of Fact, the Report and Recommendation of the Hearing Officer dated November 27, 1991

pertaining to Dr. Earl Caldwell. The Illinois Board found Respondent guilty of violating Illinois law, as is set forth below. The Illinois Board's Findings of Fact, Conclusions of Law and Recommendation were ultimately adopted by the Director of the Illinois Department of Professional Regulation by an Order Denying Motion for Rehearing, dated May 13, 1992. Respondent was placed on probation for a period of five years, his controlled substance license was revoked and he was fined in the amount of Twenty Thousand Dollars (\$20,000.00).

1. The Illinois Board found Respondent guilty of violating several Illinois statutes including the Illinois Medical Practice Act of 1923, Illinois Revised Statutes (1985), Chapter 111, paragraph 4433 (17) [prescribing controlled substances for other than therapeutic purposes], the Illinois Medical Practice Act of 1987, Illinois Revised Statutes (1987), Chapter 111, paragraph 4400-22(a)(17) [prescribing controlled substances for other than medically accepted therapeutic purposes], the Illinois Medical Practice Act of 1923, Illinois Revised Statutes (1985), Chapter 111, paragraph 4433(25) [professional incompetence as manifested by poor standards of care], the Illinois Medical Practice Act of 1987, Illinois Revised Statutes (1987), Chapter 111, paragraph 4400-22(a)(26) [pattern of practice which demonstrates incompetence to practice under the Act], Illinois Medical Practice Act of 1923, Illinois Revised

Statutes (1985), Chapter 111, paragraph 4433 (4) [gross or repeated malpractice resulting in serious injury to a patient], the Illinois Medical Practice Act of 1987, Illinois Revised Statutes (1987), Chapter 111, paragraph 4400-22 (a)(4) [gross negligence in practice under the Act], the Illinois Controlled Substances Act, Illinois Revised Statutes (1987), Chapter 56 1/2, paragraph 1312 (h) [a failure to properly prescribe controlled substances, to wit; the issuance of an order purporting to be a prescription for controlled substances to an individual, not in the regular course of professional treatment, research, or an authorized Methadone program, which is intended to and is of a quantity to maintain that individual's or any other individual's addiction, habituation, customary use, dependency or diversion of that controlled substance].

2. The conduct upon which the Illinois Board found Respondent guilty included, among other things, Respondent's continual prescription of controlled substances for patient C.B. during a period from on or about February 10, 1986 to and including September 24, 1990, when he should have known that C.B. was a narcotic dependent person. Said prescriptions included controlled substances such as Meproamate, Fastin, Darvocet N-100, Tylenol § 4, Phenobarbital, Dalmane and Xanax. The quantities of controlled substances prescribed, particularly the Meproamate and Darvocet, were sufficient to maintain C.B.'s physical and psychological addiction or dependence on them

(Hearing Officer's Findings §38 - 50, pgs. 14-18). Respondent's treatment of C.B. caused her to become dependent on controlled substances. The Illinois Board stated that the record indicated that in 1989 and 1990, C.B. saw Respondent approximately once every two weeks. On each visit, Respondent gave C.B. prescriptions for controlled substances, usually Darvocet and Meprobamate. These prescriptions generally allowed one refill and would last one month if taken properly, however, C.B. would ingest the pills in two weeks and return for a new prescription. Finally, Respondent added Phenobarbital to the mix and the result was C.B.'s hospitalization for a drug overdose (Hearing Officer's Additional Findings, pgs. 23 - 24). The Illinois Board stated that on April 12, 1990, C.B. was admitted to St. Francis Hospital in Blue Island, Illinois, for a drug overdose. Blood tests were positive for Darvocet, Meprobamate and Phenobarbital. The Illinois Board found that Respondent's issuance of prescriptions for controlled substances to C.B. constituted recklessness and a disregard for her safety. The Illinois Board also found that Respondent's continual issuance of prescriptions for controlled substances for C.B. constituted a pattern and practice which demonstrated Respondent's incompetence to practice medicine (Hearing Officer's Findings 46 - 53, pgs. 18 - 19).

3. The conduct upon which the Illinois Board found Respondent guilty would if committed in New York State, constitute

professional misconduct under N.Y. Educ. Law §6530(3) (McKinney Supp. 1993) [practicing the profession with negligence on more than one occasion] and/or N.Y. Educ. Law §6530(4) (McKinney Supp. 1993) [practicing the profession with gross negligence on a particular occasion] and/or N.Y. Educ. Law §6530(5) (McKinney Supp. 1993) [practicing the profession with incompetence on more than one occasion] and/or N.Y. Educ. Law §6530(6) (McKinney Supp. 1993) [practicing the profession with gross incompetence].

FIRST SPECIFICATION

Respondent is charged with professional misconduct by reason of his having been found guilty of professional misconduct by the 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 New York State Law, in violation of N.Y. Educ. Law 6530(9)(b) (McKinney Supp 1993) in that the Petitioner charges:

1. The facts in Paragraphs A and A.1, A.2 and A.3.

SECOND SPECIFICATION

Respondent is charged with having committed professional misconduct by reason of his having had disciplinary action taken against his license to practice medicine by the duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action involving his license, would if committed in New York State constitute professional misconduct under New York State Law, in violation of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1993) in that the Petitioner charges:

2. The facts in Paragraphs A and A.1., A.2 and A.3.

DATED: Albany, New York
November 1, 1993



Peter D. Van Buren
Medical Conduct
Bureau of Professional Medical
Conduct