



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

PUBLIC

February 11, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Neil Burack, M.D.
P.O. Box 696
McLean, Virginia 22101-0696

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional
Medical Conduct
433 River Street - Suite 303
Troy, New York 12180-2299

RE: In the Matter of Neil D. Burack, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-037) 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.

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.

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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh

Enclosure

IN THE MATTER

OF

NEIL D. BURACK, M.D.

DETERMINATION

AND

ORDER

BPMC NO. 03-37

A hearing was held on January 23, 2003, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated November 1, 2002, were served upon the Respondent, **Neil D. Burack, M.D.** **Hrusikesh Parida, M.D.**, Chairperson, **Eleanor Kane, M.D.**, and **William McCafferty, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared at the hearing and represented himself.

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 when a licensee is charged solely with a

violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Neil D. Burack, M.D.

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.

1. Neil D. Burack, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1981, by the issuance of license number 146375 by the New York State Education Department (Petitioner's Ex. 4).

2. On September 14, 2001, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs ("California Board"), by a Decision ("California Decision"), accepted the Surrender of the Respondent's Physician's and Surgeon's

Certificate, based on disabilities that impair his ability to practice medicine safely (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(7) - "Practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability;..." and
- New York Education Law Section 6530(8) - "...having a psychiatric condition which impairs the licensee's ability to practice..."

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having 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 surrender would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The California Decision provides in paragraph 8 of its Stipulated Surrender that "Respondent acknowledges that he suffers from disabilities that impair his ability to practice medicine safely." (Petitioner's Ex. 5 p. 3). The Petitioner, noting that this surrender is the result of an investigation of the Respondent's medical competence and that paragraph 4 of the Stipulated Surrender states that the "investigation relates to allegations that Respondent is unable to practice medicine safely due to physical and mental impairment..." (Petitioner's Ex. 5 p. 3), argued that the disabilities acknowledged in paragraph 8 should be interpreted to include both physical and mental disabilities. The Respondent argued that he had only one disability, narcolepsy, that this was the sole disability referenced in paragraph 8 of the Stipulated Surrender, that he did not suffer from any mental disability at the time that the California Decision was issued, and that he presently suffers from no mental disability.

Regarding the physical disability, narcolepsy, the Respondent, while acknowledging its existence, argued that the condition was now under control, thanks to medication. Therefore, according to the Respondent, there is no need for a penalty affecting his legal authorization to practice medicine in New York State. However, the only evidence introduced by the Respondent to corroborate his testimony regarding his ability to practice safely despite the narcolepsy is a one sentence long note from Archibald H. Green, D.O. (Respondent's Ex. D). The Respondent testified that his therapist for this condition refused to write a letter for this hearing because the therapist did not want to get involved. The Hearing Committee finds this explanation for the absence of a letter from the therapist to be unworthy of belief.

Regarding the allegation of mental disability, the Respondent, despite denying that such a disability exists, testified that he had three nervous breakdowns in 1999 and 2000,

and that he was involuntarily committed to a mental hospital from May 11, 2000, to June 1, 2000, for a psychiatric evaluation. The Respondent also failed to explain why, if the California Decision was based on a single disability, narcolepsy, he acknowledged in paragraph 8 of the Stipulated Settlement that he suffers from "disabilities" that impair his ability to practice medicine safely. If narcolepsy were the only problem, paragraph 8 would refer to "a disability," not "disabilities." The Hearing Committee concludes that the Respondent did suffer from a mental disability at the time that the California Decision was issued.

The Petitioner recommended that the Respondent's license be revoked. The Hearing Committee believes that it does not have enough information about the present state of the Respondent's narcolepsy or his mental health to impose such a stringent penalty at this time. Instead, the Hearing Committee will suspend his license for six months, during which time the Respondent will be given the opportunity to submit to an evaluation of his narcolepsy by a neurologist and an evaluation of his mental health by a psychiatrist. The neurologist and the psychiatrist will be chosen by the Petitioner's Office of Professional Medical Conduct ("OPMC") and the cost of the evaluations will be paid by the Petitioner. The Respondent must state in writing to OPMC (New York State Department of Health, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Troy, New York 12180) no later than 30 days after the effective date of this Determination and Order that he will submit to these evaluations. Failure to do so or failure to cooperate in any substantial way with the evaluation process will lead to a negative inference about the Respondent's physical and mental health and, consequently, the six-month suspension will be converted into a revocation of the Respondent's license. If, after receipt of the evaluations, the Petitioner is of the opinion

that penalties in addition to the six-month suspension are warranted, the hearing will reconvene to address the issue.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is suspended for six months.
2. The Respondent shall state in writing to OPMC no later than 30 days after the effective date of this Determination and Order that he is willing to submit to an evaluation of his narcolepsy by a neurologist chosen by OPMC and an evaluation of his mental health by a psychiatrist chosen by OPMC. If the Respondent does not provide such written consent or if the Respondent does not cooperate with the evaluation process, the Petitioner shall notify the Hearing Committee, which will issue an amended Determination and Order revoking the Respondent's license.
3. The evaluations will be at Petitioner's expense.
4. If, upon receipt of the evaluations, the Petitioner determines that a penalty in addition to the six-month suspension is warranted, the Petitioner will schedule an additional hearing day to address this issue.
5. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

DATED: Middletown, New York
February 5, 2003

Hrusikesh Parida
Hrusikesh Parida, M.D.
Chairperson

Eleanor Kane, M.D.
William McCafferty, Esq.

APPENDIX 1

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

IN THE MATTER
OF
NEIL D. BURACK, M.D.
CO-01-11-5632-A

NOTICE OF
REFERRAL
PROCEEDING

TO: NEIL D. BURACK, M.D.
PO Box 696
McLean, VA 22101-0696

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 18th day of December 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 December 9, 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 December 9, 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

November 1, 2002

Peter D. Van Buren

PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
NEIL D. BURACK, M.D.
CO-01-11-5632-A

STATEMENT
OF
CHARGES

NEIL D. BURACK, M.D., the Respondent, was authorized to practice medicine in New York state on July 1, 1981, by the issuance of license number 146375 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 14, 2001, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, (hereinafter "California Board"), by a Decision (hereinafter "California Decision"), accepted the Surrender of Respondent's physician's and surgeon's certificate, based on disabilities that impair Respondent's ability to practice medicine safely.

B. The conduct resulting in the California 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(7) (practicing the profession while impaired by physical or mental disability); and/or
2. New York Education Law §6530(8) (having a psychiatric condition which impairs the ability to practice).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) 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, in that Petitioner charges:

1. The facts in Paragraph A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having 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 surrender would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

DATED: *November 1*, 2002
Albany, New York


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