



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

June 14, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

James F. Biondo, Esq.
Rosenblum & Tannenbaum LLC
50 Main Street
White Plains, New York 10606

Paul S. Baxt, M.D.
1105 Mountain Pines Road
Boulder, Colorado 80302-9223

RE: In the Matter of Paul S. Baxt, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-198) 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:cah
Enclosure

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

IN THE MATTER
OF
PAUL S. BAXT, M.D.

DETERMINATION
AND
ORDER
BPMC #02-198

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated December 26, 2001, were served upon the Respondent, **PAUL S. BAXT, M.D.**. **FRED LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **MR. JOHN D. TORRANT**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on May 23, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The **RESPONDENT** appeared in person and by **JAMES F. BIONDO, ESQ.**

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent was charged with professional misconduct pursuant to Education Law Sections 6530(9)(a)(2)(ii), (b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1. It is noted that Specification 2 of the Statement of Charges was withdrawn by the Department at the hearing.

WITNESSES

For the Petitioner:	None
For the Respondent:	Respondent David Starrett, M.D. (by telephone)

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the

cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

1. **PAUL S. BAXT, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 8, 1968, by the issuance of license number 101611 by the New York State Education Department (Ex. 4). Respondent currently resides in New York and intends to practice medicine in this state, although his license is currently inactive.
2. On July 26, 2000, in the United States District Court, District of New Jersey, Respondent was found guilty, based on a plea of guilty, of two (2) counts of making a false statement on a loan application, a felony, in violation of U.S. Code, Title 18, Section 1014, and was sentenced to fifteen (15) months imprisonment on each count to run concurrently, one (1) year supervised release upon release from imprisonment, and to pay \$90,000.00 restitution (Ex. 6).
3. On October 12, 2000, the State Board of Medical Examiners, State of Colorado (hereinafter "Colorado Board"), by a Stipulation and Final Agency Order (hereinafter "Colorado Order"), accepted the surrender of Respondent's license to practice medicine in Colorado with the agreement that he would never apply to reactivate or reinstate his Colorado license and would never apply for a new license, based upon prima facie evidence that he suffered from a physical or mental condition that prevented him from practicing medicine (Ex. 7).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Colorado Board's disciplinary actions against Respondent would constitute misconduct under the laws of

New York State, pursuant to New York Education Law §6530(8) (being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice). In addition, Respondent's commission of a crime under Federal Law constitutes professional misconduct under New York Education Law §6530(9)(a)(2)(ii).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(2)(ii) by having been found guilty of a crime under Federal Law.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

WITHDRAWN BY THE DEPARTMENT

THIRD 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 disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on July 26, 2000, in the United States District Court, District of New Jersey, Respondent was found guilty, based on a plea of guilty, of two counts of making a false statement on a loan application, a felony, in violation of U.S. Code, Title 18, Section 1014, and was sentenced to fifteen months imprisonment on each count to run concurrently, one year supervised released upon release from imprisonment, and to pay \$90,000.00 restitution. The record further establishes that on October 12, 2000, the Colorado Board, by issuance of the Colorado Order, accepted the surrender of Respondent's license to practice medicine in Colorado with the agreement that he would never apply to reactivate or reinstate his Colorado license and would never apply for a new license, based upon prima facie evidence that he suffered from a physical or mental condition that prevented him from practicing medicine.

Respondent's conviction of a crime under Federal Law constitutes professional misconduct in New York State per se, pursuant to New York Education Law §6530(9)(a)(2)(ii).

In addition, the Colorado Order constitutes evidence of misconduct in New York State pursuant to New York Education Law §6530(9)(d) because Respondent surrendered his license after disciplinary action was instituted against him, and since the underlying finding, that we had a physical or mental condition that prevented him from practicing medicine, would have been the basis for a misconduct finding in New York under New York Education Law §6530(8). The Hearing Committee concludes, however, that the Colorado Order does not constitute, as charged in the instant proceeding, evidence of misconduct under New York Education Law §6530(7) (practicing while impaired by drugs, alcohol, physical disability or mental disability), because Respondent never practiced in Colorado

(his testimony on this point was not refuted by the Department), nor does the Order make a finding that he practiced anywhere else while impaired. The Hearing Committee also rejects the charge that the Colorado Order constitutes evidence of misconduct under New York Education Law §6530(20) (moral unfitness), since moral fitness was not a subject of the Order.

Inasmuch as the two findings of misconduct have been substantiated by the documentation submitted by the Department relative to the Federal criminal conviction and the Colorado license surrender, the only remaining issue is the penalty to be imposed in this state.

The Hearing Committee feels that the appropriate penalty to be imposed due to Respondent's conviction of the Federal crime is a suspension of his license for one year. The Hearing Committee feels that revocation is not called for, since the crime was unrelated to the practice of medicine, and since Respondent has already been heavily punished for it, primarily by having been incarcerated for an actual period of 12 months.

The argument made by Respondent that the false statements he made on applications to renew and extend loans that were the subject of the criminal proceeding were the result of uncontrollable impulses related to his bipolar disorder cannot be considered in mitigation of the penalty because they are inconsistent with the conviction; the criminal court findings as to the nature and extent of the criminal violations are binding on this tribunal. The indictment to which Respondent pled guilty specified that Respondent "knowingly and willfully" overstated his investment income, and the claim that he could not stop himself from making these false statements is inconsistent with this element of the conviction. In any event, the Hearing Committee was not convinced that Respondent's actions were solely the product of uncontrollable compulsion.

The Hearing Committee also feels, however, that the suspension should be stayed, providing Respondent fully complies with the terms (set forth in the Order which follows) of a three year probationary period, to commence upon Respondent's resumption of practice in New York State. The probation is intended to provide protection for the residents of New York State from problems related to Respondent's psychiatric condition.

Currently, Respondent's condition (bipolar disorder) has been stabilized with medication and therapy, according to the testimony of Respondent's therapist, Dr. David Starrett. However, it is also apparent from the evidence that Respondent must keep taking his medications and receiving therapy in order to avoid destabilization of his condition. Given the relatively short period of time his condition has been more stable (Respondent testified that a prescribed medication regimen did not stabilize his condition until some time in 1999), a three year period of probation is essential to ensure that this stabilization will continue in the future and that Respondent will not be impaired for the practice of medicine.

One feature of Respondent's probation that warrants mention is a limitation prohibiting Respondent from practicing surgery, a limitation Respondent indicated was consistent with his intentions, and which the Hearing Committee feels is essential to avoid patient harm, given the nature of Respondent's condition.

It is noted that other evidence was adduced at the hearing which, upon more careful consideration, is considered to be irrelevant to the charges in this case and which will not be addressed further.

ORDER

IT IS HEREBY ORDERED THAT:

1. The medical license of **PAUL S. BAXT, M.D.** is hereby **SUSPENDED** for a period of **ONE (1) YEAR**. The suspension is stayed, providing Respondent fully complies with the terms of probation set forth below.
2. Respondent is hereby placed on **PROBATION** for a period of **THREEE (3) YEARS**, to commence upon Respondent's resumption of practice in New York State.
3. The terms of Respondent's probation are as follows:
 - A). Prior to resuming practice in New York, Respondent must provide thirty (30) days prior written notice concerning his intention to the New York State Office of Professional Medical Conduct ("OPMC"). This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility since the date of this hearing.
 - B). Respondent's probation shall be monitored by OPMC, either directly, or in whole or in part through a designee, such as the Committee for Physicians' Health of the State Medical Society.
 - C). During the period of his probation, Respondent shall not perform surgery.
 - D). During the period of his probation, Respondent shall continue with whatever regimen of therapy and medication is recommended by his treating practitioners. Respondent shall provide all treating practitioners with a copy of this Decision and Order and provide verification of this notification to OPMC within 30 days of the effective date thereof. Respondent shall ensure, before resuming practice in New York, that his treating practitioners notify OPMC of their current assessments of Respondent's condition and the content of their current treatment regimens, and thereafter report any material changes therein. Routine medication changes need not be reported.

Respondent shall also ensure that his treating practitioners file quarterly reports to OPMC detailing his status and response to treatment.

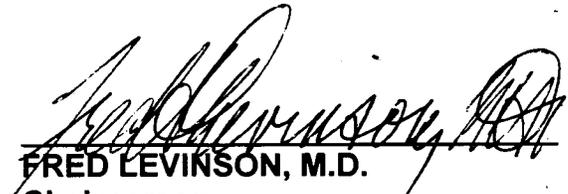
- E). Respondent shall notify in writing any group, clinic or medical facility with whom he becomes affiliated or at which he practices during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.
- F). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which he is affiliated or at which he practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired physicians. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- G). Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice, professional and residential addresses or telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility during the probationary period, within 30 days of each event;
- H). Respondent shall notify the Director of OPMC, in writing, if he ceases to be engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status. Respondent's probation shall be tolled while Respondent is not practicing in New York State during such period and shall resume upon his return to practice in New York State.
- I). Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- J). Respondent shall comply with all terms, conditions, and restrictions to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance.

- K). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.
- L). OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation, or any individual provision(s) thereof, if it is satisfied that such relief would not be contrary to the best interests of New York State residents.

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

DATED: Middletown, New York

June 12 2002


FRED LEVINSON, M.D.
Chairperson

ERNST A. KOPP, M.D.
MR. JOHN D. TORRANT

APPENDIX 1

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

IN THE MATTER

OF

**PAUL S. BAXT, M.D.
PM-01-11-5740-A**

NOTICE OF

REFERRAL

PROCEEDING

TO: PAUL S. BAXT, M.D.
1105 Mountain Pines Road
Boulder, CO 80302-9223

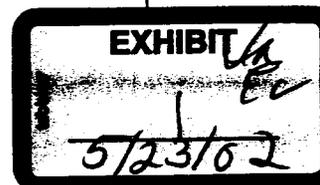
PLEASE TAKE NOTICE THAT:

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 20th day of February 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 February 11, 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 February 11, 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

December 26, 2001



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

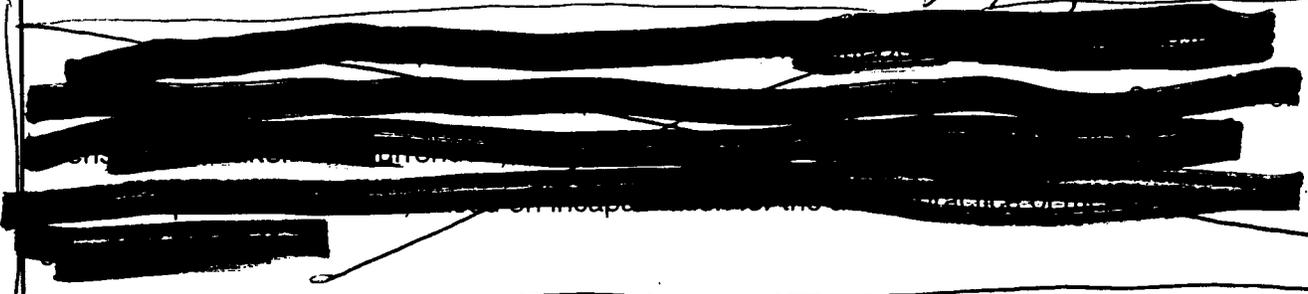
STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
PAUL S. BAXT, M.D.
PM-01-11-5740-A

STATEMENT
OF
CHARGES

PAUL S. BAXT, M.D., the Respondent, was authorized to practice medicine in New York state on July 8, 1968, by the issuance of license number 101611 by the New York State Education Department.

FACTUAL ALLEGATIONS



B. On or about July 26, 2000, in the United States District Court, District of New Jersey, Respondent was found guilty, based on a plea of guilty, of two (2) counts of making a false statement on a loan application, a felony, in violation of U.S. Code, Title 18, Section 1014, and was sentenced to fifteen (15) months imprisonment on each count to run concurrently, one (1) year supervised released upon release from imprisonment, and to pay \$90,000.00 restitution.

C. On or about October 12, 2000, the State Board of Medical Examiners, State of Colorado (hereinafter "Colorado Board"), by a Stipulation and Final Agency Order (hereinafter "Colorado Order"), accepted the surrender of Respondent's license to practice medicine in Colorado with the agreement that he will never apply to reactivate or reinstate his Colorado

license and will never apply for a new license, based on prima facie evidence that he suffers from a physical or mental condition as to render him unable to perform medical services with reasonable skill and safety to the patient.

D. The conduct resulting in the Colorado Board disciplinary actions 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 alcohol, drugs or physical or mental disability);
2. New York Education Law §6530(8) (being a habitual abuser of alcohol or dependent on or a habitual user of drugs or having a psychiatric condition which imposes the ability to practice); and/or
3. New York Education Law §6530(20) (moral unfitness).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph B.

SECOND SPECIFICATION

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

would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

- 2. The facts in Paragraphs ^B C, and/or D.

THIRD SPECIFICATION

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

- 3. The facts in Paragraphs ^B C, and/or D.

DATED: *Dec. 26*, 2001
Albany, New York

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