



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 26, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Robert Bogan, Esq.
New York State Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237-0032

Mr. Timothy Mahar, Esq.
New York State Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237-0032

E. Brien Dugas, M.D.
49 George Schaeffer Street
Peacedale, Rhode Island 02883

E. Brien Dugas, M.D.
South County Medical Office
Building
70 Kenyon Avenue
Wakefield, Rhode Island 02879

RE: In the Matter of E. Brien Dugas, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-218) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place

433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above. As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

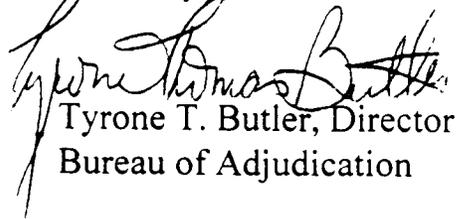
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla

Enclosure

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

IN THE MATTER
OF
E. BRIEN DUGAS, M.D.

DETERMINATION

AND

ORDER

ORDER #99-218

COPY

A Notice of Referral Proceedings and Statement of Charges, both dated July 8, 1999, were served upon the Respondent, **E. BRIEN DUGAS, M.D.**

JOHN H. MORTON, M.D., Chairperson, **ALBERT ELLMAN, M.D.** and **HEIDI B. MILLER, R.P.A.**, 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 August 18, 1999, at the Office 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 **ROBERT BOGAN, ESQ.**, and **PAUL R. MAHER, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf.

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 9(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

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. **BRIEN DUGAS, M.D.**, the Respondent, was authorized to practice medicine in New York state on May 14, 1986, by the issuance of license number 166131 by the New York State Education Department (Pet's. Ex. 3).

2. On February 10, 1999, the State of Rhode Island, Department of Health, Board of Medical Licensure, (hereinafter "Rhode Island Board"), entered a Consent Order, (hereinafter "Rhode Island Order"), wherein Respondent was required to practice medicine under supervision, was placed on three (3) years probation, was required to provide urine or blood samples for alcohol or other legal substances not prescribed by his physician, and was required to undergo a clinical competency evaluation.

The Rhode Island Board's action was based on the Respondent having ordered controlled substances from wholesale distributors and self administering them without keeping required records in violation of State and Federal Laws relating to controlled substances (Pet's, Ex. 4).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct which result in the Rhode Island Board's disciplinary action against the Respondent would, if committed in New York, constitute misconduct under the laws of New York State.

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VOTE OF THE HEARING COMMITTEE

(All votes were unanimous unless otherwise specified)

FIRST SPECIFICATION

The Respondent violated New York Education Law §6530(9)(b) by reason of 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 committed in New York state.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

The Respondent violated New York Education Law §6530(9)(d) by reason of his having had disciplinary action taken against him 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 Hearing Committee has reviewed the entire record in this case to determine an appropriate penalty. The Hearing Committee believes that there are mitigating circumstances which should be considered.

In 1998, the Respondent was diagnosed with Bipolar Disorder and is being treated for that condition, which is now under control (Pet's. Ex. 4; Resp. Exs. A, C and D).

The Hearing Committee was very impressed by the Respondent's candor and sincerity, his admission of past mistakes and his efforts to rehabilitate himself. He recognizes his deficiencies and understands the gravity of his situation. He has expressed profound gratitude that he has been given a second chance by the State of Rhode Island.

Although he is licensed to practice medicine in New York state, he is not currently registered with the State Education Department.

The Hearing Committee determines that the interest of justice and the interest of the people of the State of New York can best be served in this case by ordering that the Respondent not seek to be registered to practice medicine in this state until such time as he has successfully completed the terms of probation as ordered by the state of Rhode Island.

The Hearing Committee further determining that if at some future date the Respondent chooses to return to practice medicine in the State of New York he must:

- Provide ninety days prior notice concerning his return to the Office of Professional Medical Conduct,
- Appear before a committee of the Board for Professional Medical Conduct and submit proof that he has fully complied with all of the terms of his Rhode

Island probation and that his Rhode Island medical license has been fully restored.

- Provide proof that his license remains in good standing in all states where he maintains a license; and,
- Provide information concerning this action to any New York hospital at which he applies for privileges and/or employment.

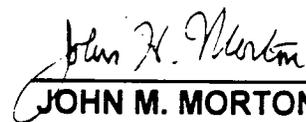
ORDER

IT IS HEREBY ORDER THAT:

1. The Respondent shall not seek to be registered to practice medicine in the State of New York by the State Education Department until such time as he has fully complied with all of the terms of his Rhode Island probation and his Rhode Island medical license has been fully restored.
2. If at some future date the Respondent chooses to return to the practice of medicine in the State of New York he must:
 - Provide ninety days prior notice concerning his return to the Office of Professional Medical Conduct,
 - Appear before a committee of the Board for Professional Medical Conduct and submit proof that he has fully complied with all of the terms of his Rhode Island probation and that his Rhode Island medical license has been fully restored.

- Provide proof that his license remains in good standing in all states where he maintains a license; and,
 - Provide information concerning this action to any New York hospital at which he applies for privileges and/or employment.
3. This Order shall be effective upon service on the Respondent or the respondent's attorney by personal service or by certified or registered mail.

DATE: 8/24/99 ROCHESTER, NEW YORK


JOHN M. MORTON, M.D.
Chairperson

ALBERT ELLMAN, M.D.
HEIDI B. MILLER, R.P.S.

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

-----X

IN THE MATTER : STATEMENT
OF : OF
E. BRIEN DUGAS, M.D. : CHARGES

-----X

E. BRIEN DUGAS, M.D., the Respondent, was authorized to practice medicine in New York state on May 14, 1986, by the issuance of license number 166131 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 10, 1999, the State of Rhode Island, Department of Health, Board of Medical Licensure, (hereinafter "Rhode Island Board"), entered a Consent Order, (hereinafter "Rhode Island Order"), wherein Respondent was required to practice medicine under supervision, was placed on three (3) years probation, was required to provide urine or blood samples for alcohol or other legal substances not prescribed by his physician, and was required to undergo a clinical competency evaluation based on Respondent having ordered controlled substances from wholesale distributors, and in violation of the Controlled Substance Act, self administering them without keeping required records.

B. The conduct resulting in the Rhode Island Board's 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(2) (practicing the profession fraudulently);

2. New York Education Law §6530(7) (practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability);

3. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine);

4. New York Education Law §6530(20) (moral unfitness); and/or

5. New York Education Law §6530(21) (making a false report or failing to file a report required by law).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by reason of 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 committed in New York state, in that the Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by reason of his having had disciplinary action taken against him 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 the Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *July 8*, 1999
Albany, New York

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