



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

June 30, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ann Gayle, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza - 6th Floor
New York, New York 10001

Joel Brion Burrell, M.D.
4211 Greenfield Drive
Sandusky, Ohio 44870

RE: In the Matter of Joel Brion Burrell, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-144) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

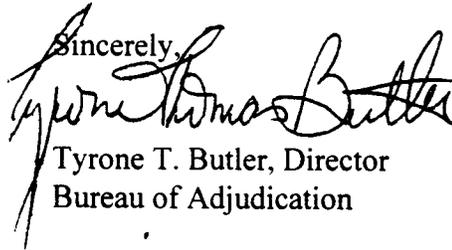
All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

COPY

DETERMINATION

AND

ORDER

ORDER# 99-144

IN THE MATTER OF
OF
JOEL BRION BURRELL, M.D.

A Notice of Referral Proceeding and Statement of Charges, both dated February 11, 1999, were served upon the Respondent, **JOEL BRION BURRELL, M.D.**

PATRICK F. CARONE, M.D., Chairperson, **DIANA E. GARNEAU, M.D.**, and **MARY PATRICIA MEAGHER**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10)(e) of the Public Health Law ["PHL"]. **DENNIS T. BERNSTEIN, ESQ., ADMINISTRATIVE LAW JUDGE**, served as Administrative Officer for the Hearing Committee.

A hearing was held on May 4, 1999 at the Offices of the New York State Department of Health, 5 Penn Plaza, New York, New York. The Department of Health ["the Petitioner"] appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ANN GAYLE, ESQ.**, Associate Counsel, Bureau of Professional Medical Conduct. The Respondent appeared in person on his own behalf.

Evidence was received and a transcript of these proceedings was made.

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

STATEMENT OF CASE

This case was brought pursuant to PHL § 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of § 6530(9) of the Education Law ["Ed L"]. 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 is charged with professional misconduct pursuant to Ed L §§ 6530(9)(a)(iii) and 6530(9)(b). The charges are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after review of the entire record in this matter. Numbers preceded by "Tr." in parenthesis refer to hearing transcript page numbers. Numbers or letters preceded by "Ex." in parenthesis refer to specific exhibits. These citations represent evidence that the Hearing Committee found persuasive 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. Joel Brion Burrell, M.D. ["the Respondent"] was authorized to practice medicine in New York State on April 17, 1990, by the issuance of license number 181907 by the New York State Education Department (Ex. 2).
2. On or about November 21, 1996, in Tiffin Municipal Court, Tiffin, Ohio, the Respondent, following a jury trial, was convicted of Assault, a Misdemeanor of the First Degree, in violation of § 2903.13(A) of the Ohio Revised Code ["ORC"] (Court Ex. 1), for having physically attacked an emergency room physician at Tiffin Mercy Hospital on April 3, 1996 ["the Assault Conviction"]. (Ex. 3 and Ex. 5, pp. 12-15).
3. Immediately following the jury verdict the Respondent was sentenced to pay a fine of \$10 plus court costs and to serve 30 days in jail, with 28 days conditionally suspended, and he was placed on probation for 1 year. As a condition of the probation the Respondent was required to be evaluated by Fireland's Counseling and Recovery Services and he was ordered to complete, at his own expense, the recommended treatment. He was also ordered to cooperate with the local mediation program. (Ex. 3, p. 3 and Ex. 4, pp. 14-15).
4. The Respondent appealed the Assault Conviction to the Seneca County Court of Appeals and the Assault Conviction was affirmed (Ex. 3, pp. 3, 5 and 6 and Ex. 5, pp. 9 and 15).
5. On May 13, 1998 the State Medical Board of Ohio ["the Ohio Board"] found that on or about November 21, 1996, in Tiffin Municipal Court, the Respondent had been found guilty of violating ORC § 2903.13(A), Assault, a Misdemeanor of the First Degree. The Ohio Board also found that this conviction resulted from the Respondent having physically attacked an emergency room physician at Tiffin Mercy Hospital, and that this incident occurred in the course of the Respondent's practice of medicine. The Ohio

Board concluded that these findings fall within the purview of ORC § 4731.22(B)(11), which authorizes the Ohio Board to discipline a physician for a conviction of a misdemeanor committed in the course of practice (Court Ex. 3). (Ex. 5).

6. On May 13, 1998 the Ohio Board, based on its findings and conclusions, suspended the Respondent's certificate to practice medicine and surgery in the State of Ohio for a period of one year. However, the suspension was stayed, subject to the Respondent's compliance with various enumerated probationary terms, conditions and limitations for a period of at least five years. Among these probationary terms, conditions and limitations were the requirements that the Respondent commence and continue appropriate treatment and that he appear in person for quarterly interviews before the Ohio Board. (Ex. 5).
7. Finally, the Respondent's conduct which resulted in the Assault Conviction, would, if committed in New York State, constitute a crime under New York State law. More specifically, such conduct would constitute Assault in the Third Degree under § 120.00 of the New York Penal Law, a class A Misdemeanor (Court Ex. 2).
8. In addition, the Respondent's conduct which resulted in the disciplinary action taken by the Ohio Board, would, if committed in New York State, constitute professional misconduct under the laws of New York State. More specifically, such conduct would constitute professional misconduct under Ed L § 6530(9)(a)(iii) (being convicted of committing a crime under the law of another jurisdiction and which, if committed in New York State, would have constituted a crime under New York State law).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the

Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Respondent did commit professional misconduct as defined by Ed L § 6530(9)(a)(iii). The Petitioner has proved by a preponderance of the evidence that the Respondent had been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within New York State, would have constituted a crime under New York State law.

The Respondent did commit professional misconduct as defined by Ed L § 6530(9)(b). The Petitioner has proved by a preponderance of the evidence that the Respondent had 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 OF THE HEARING COMMITTEE

(All votes were unanimous)

First Specification [Violation of Ed L § 6530(9)(a)(iii)]

Factual Allegation in support of the First Specification

A Sustained

First Specification Sustained

Second Specification [Violation of Ed L § 6530(9)(b)]

Factual Allegation in support of the Second Specification

B Sustained

Second Specification

Sustained

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that the Respondent's license to practice medicine in the State of New York should be revoked.

This determination was reached after due and careful consideration of the full spectrum of penalties available pursuant to PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Hearing Committee's selection of a specific penalty was made after a thorough evaluation of the underlying acts of misconduct and the issue of whether or not the public is placed at risk by the Respondent. The Hearing Committee also conducted a thorough evaluation of the Respondent's testimony and demeanor during the hearing, as well as an extensive review of the documents admitted into evidence.

After reviewing the Sentencing Minutes relating to the Assault Conviction (Ex. 4) and the Report and Recommendation of the Attorney Hearing Examiner of the Ohio Board (Ex. 5, pp. 8-23) and after hearing the Respondent testify at this hearing, it is exceedingly clear to the Hearing Committee that the Respondent has not accepted responsibility for his conduct which ultimately resulted in the Assault Conviction. Additionally, he has shown no remorse or introspection.

The Respondent has not only refused to accept responsibility for the underlying

incident, but he has repeatedly blamed others for his criminal conviction, including the complaining witness, the hospital staff, the hospital administration, the arresting officer, his lawyer, and even the jury (Ex. 4, pp. 7-11 and Ex. 5, pp. 15-17). He tends to generate many theories of conspiracy and corruption and he also tends to view himself as a victim (Tr. 44-45 and 59; Ex. 4, p. 10 and Ex. 5, p. 17).

Furthermore, frequently during the hearing the Respondent was unable to grasp rules of procedure, even after repeated instructions and guidance by the Administrative Law Judge. The Respondent also demonstrated a reluctance to follow rulings and, at times, appeared defiant and verbally combative. In addition, the Hearing Committee observed that the Respondent was unprepared and disorganized.

The circumstances surrounding the Respondent's departure from Tiffin Mercy Hospital raise questions about the Respondent's credibility. The Respondent testified at this hearing and before the Ohio Board that his departure from Tiffin Mercy Hospital was essentially voluntary and at his choosing. He stated in effect that his hospital privileges had expired and he never renewed them. (Tr. 47-49; Ex. 5, p. 19). However, the Respondent acknowledged that on May 12, 1997 he had signed a form with the Ohio Civil Rights Commission and the EEOC which stated that on April 30, 1997 he was removed from the schedule at Tiffin Mercy Hospital, which led to his discharge (Tr. 49-56).

It should be noted that the Respondent failed to present evidence of any mitigating circumstances. He didn't even submit a letter or a report from the psychiatrist that he is presently seeing (Tr. 46-47).

Particularly troubling to the Hearing Committee was the fact that the underlying incident which gave rise to the Assault Conviction occurred in a medical setting – a hospital

emergency room. The Respondent's conduct was not only injurious to the complaining witness, but it was also disruptive to the hospital, its staff and its patients. Such conduct is inexcusable and should not be tolerated.

Finally, the Hearing Committee is concerned that the Respondent, who graduated Medical School in 1987 and failed his neurology boards in 1997, is still practicing neurology – a fast moving and highly technical specialty (Tr. 41; Ex. 5, p. 11).

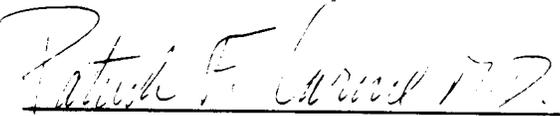
In conclusion, given the violent nature of the underlying acts of misconduct, the fact that the incident occurred in a medical setting, the Respondent's continuous refusal to accept responsibility for the underlying incident and his tendency to blame others for his criminal conviction, the absence of any mitigating circumstances, and his overall conduct during this hearing, the Hearing Committee believes that the Respondent represents a serious threat to the public. Therefore, the Hearing Committee determines that revocation of the Respondent's license to practice medicine is the appropriate penalty to impose under the totality of the circumstances presented.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specifications of professional misconduct contained within the Statement of Charges (Ex. 1) are **SUSTAINED**; and
2. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED**; and
3. This **ORDER** shall be effective upon service on the Respondent which shall be either by certified mail at the Respondent's last known address (to be effective upon receipt or seven days after mailing, whichever is earlier) or by personal service (to be effective upon receipt).

**Dated: New York, New York
June 28, 1999**


PATRICK F. CARONE, M.D.
Chairperson

DIANA E. GARNEAU, M.D.
MARY PATRICIA MEAGHER

TO: ANN GAYLE
Associate Counsel
Bureau of Professional Medical Conduct
Division of Legal Affairs
5 Penn Plaza
New York, N.Y. 10001

JOEL BRION BURRELL, M.D.
4211 Greenfield Drive
Sandusky, Ohio 44870

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Appendix 1

APPENDIX I

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

IN THE MATTER
OF
JOEL BRION BURRELL, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Joel Brion Burrell, M.D.
85 Benedict Avenue, Suite 103
Norwalk, OH 44857

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1999) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1999). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on April 13, 1999, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of 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 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1999) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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: New York, New York
February 11, 1999



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Ann Gayle
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
JOEL BRION BURRELL, M.D.

STATEMENT
OF
CHARGES

JOEL BRION BURRELL, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 17, 1990, by the issuance of license number 181907, by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about November 21, 1996, in Municipal Court of Tiffin, Seneca County, Ohio, Respondent, following a jury trial, was convicted of Assault in the First Degree, a Misdemeanor of the First degree, in violation of Ohio Revised Code Section 2903.13A, for having physically attacked an emergency room physician at Tiffin Mercy Hospital, he was sentenced to pay a fine of \$10 plus costs and to serve 30 days in jail with 28 days conditionally suspended, and he was placed on probation for 1 year with the condition and order that he receive an evaluation and complete treatment.
- B. On or about May 13, 1998, the State Medical Board of Ohio (the Board) found that Respondent had been found guilty of Assault in the First Degree, a Misdemeanor, in violation of Ohio Revised Code Section 2903.13A, for having physically attacked an emergency room physician at Tiffin Mercy Hospital, and that this occurred in the course of Respondent's practice of medicine, in violation of Section 4731.22(B)(11), Ohio Revised Code.
- On or about May 13, 1998, based on the foregoing, the Board ordered that

Respondent's certificate to practice medicine be suspended for one year, with said suspension stayed subject to probationary terms, conditions, and limitations for at least five years. Said probationary terms, conditions, and limitations included, *inter alia*, that Respondent commence and continue appropriate treatment and appear in person for quarterly interviews before the Board.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii)(McKinney Supp. 1999) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Penal Law §120.00 - Assault in the third degree, a class A misdemeanor) as alleged in the facts of the following:

1. Paragraph A.

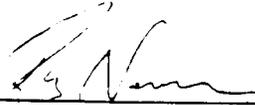
SECOND SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1999) 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 (namely N.Y. Educ. Law §§6530(9)(a)(iii)) as alleged in the facts of the following:

2. Paragraph B.

DATED: February 11, 1999
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct