



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

August 18, 1994

RECEIVED

AUG 19 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OFFICE OF
MEDICAL CONDUCT

Kenneth Wolkoff, M.D.
P.O. Box 358
Ocean City, New York 11770

Diane Abeloff, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Robert Harris, Esq.
Schneider, Harris, Harris & Furman, Esqs.
1015 Broadway
Woodmere, New York 11598

Effective Date: 8/25/94

RE: In the Matter of Kenneth A. Wolkoff, M.D.

Dear Dr. Wolkoff, Mr. Harris and Ms. Abeloff :

Enclosed please find the Determination and Order (No. 94-64) of the Professional Medical Conduct Administrative Review Board 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
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 then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in cursive script, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
KENNETH WOLKOFF, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER
ARB 94-64**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on July 15, 1994 to review the Hearing Committee on Professional Medical Conduct's May 5, 1994 Determination finding Dr. Kenneth Wolkoff guilty of professional misconduct. Both Dr. Wolkoff (Respondent) and the Office of Professional Medical Conduct (Petitioner) requested the review, through notices which the Board received on May 19, 1994 and May 25, 1994. James F. Horan served as Administrative Officer to the Review Board. Robert A. Harris, Esq. submitted a brief on the Respondent's behalf and Terrence Sheehan, Esq. submitted a brief on the Petitioner's behalf.

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

¹ Robert Briber and Sumner Shapiro did not take part in the deliberations.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

The Petitioner brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee determined that the Petitioner had met its burden of proof of proof in establishing that the Respondent had signed a stipulation with the Utah Division of Occupational and Professional Licensing in which the Respondent admitted to excessive prescribing of controlled substances, prescribing to individuals he knew were drug dependent and knowingly prescribing controlled substances in excess of medically appropriate quantities in his treatment of three patients. The Utah Board placed the Respondent's license to prescribe controlled substances on probation for three years, ordered that he attend a program on proper prescribing of controlled substances and ordered that he attend a continuing education program in record keeping or a related area. The Hearing Committee also found that the California Medical Board had revoked the Respondent's license. The Committee concluded that the Respondent had committed misconduct in New York based on the Utah and California disciplinary actions.

The Hearing Committee voted to suspend the Respondent's license to practice medicine in New York State until the Respondent completes an evaluation and, if necessary, retraining by the Physician Prescribed Education Program (PPEP) at Syracuse, New York. The Committee voted further, that following the PPEP retraining, the Respondent shall be on probation

for three years, and prohibited from prescribing controlled substances for those three years. The Committee found that the Respondent's practice of prescribing excessive doses of controlled substances has the potential of placing patients in grave risk of harm. The Hearing Committee noted that they had an independent responsibility for determining the sanction to impose against the Respondent and that they were not bound by the sanction which California or Utah had imposed. The Committee noted that they had genuine concern regarding the Respondent's professional competency to practice in New York after his absence from the formal practice of medicine for three years.

REQUESTS FOR REVIEW

The Petitioner has asked that the Hearing Committee's penalty be overturned and that the Respondent's license be revoked, because of the serious nature of the misconduct, dispensing wrongfully controlled substances in large quantities over long periods of time.

The Respondent has asked, by letter dated May 27, 1994, that the Petitioner's appeal be dismissed because the notice of review was not served timely and not served in the proper manner.

The Respondent requested through a telephone call to our Administrative Officer that he be allowed to present oral argument on this case. Our Administrative Officer informed Respondent's counsel that the Review Board does not hear oral argument in any case.

The Respondent's brief cites five points of review and annexes documents which were not available to the Hearing Committee because the documents were not in existence at the time of the hearing. 1. The Respondent contends that the Hearing Committee was not properly constituted because the Physician Assistant on the panel was not a lay member. 2. The Respondent alleges that due process was violated because copies of documents relating to the Utah and California actions were submitted to the Hearing Committee prior to the Hearing. 3. The Respondent alleges that the Hearing Committee's Administrative Officer prevented the Respondent inappropriately from questioning members of the panel in order to determine whether the Hearing Committee members were biased. 5. The Respondent alleges that he was denied due process because he was not allowed to present a witness in mitigation.

The documents which the Respondent annexed to his brief indicate that the Respondent's Utah license has been restored and that the Superior Court of California for Sacramento County has overruled the revocation of the Respondent's California license and remanded the Respondent's case to the California Medical Board for a new penalty determination.

REVIEW BOARD DETERMINATION

The Review Board has considered the record below and the briefs which counsel have submitted.

First, the Review Board does not hear oral argument and our Administrative Officer was correct in advising the Respondent's counsel that oral argument before the Board was not available.

As to the Respondent's request that the Review Board dismiss the Petitioner's appeal because the Petitioner's Notice of Review was not allegedly served in a proper manner, the Board has stated previously that whenever one party in a Professional Medical Conduct proceeding has filed an appeal with the Review Board, the case is before the Board for our consideration and either party may file briefs to raise issues with the Review Board on the appeal. The Review Board takes this position, because Public Health Law Section 230-c(4)(b) provides that after a Notice is served the "parties" have thirty days to file briefs and that each party has seven days from receipt of the other party's brief to file a response. Since the Respondent had already filed an appeal in this case, it was not necessary for the Petitioner to file a separate Notice in order to bring issues before the Board. Since it was not necessary for the Petitioner to file a separate Notice, the Review Board sees no need to consider whether or not the Petitioner's Notice was served properly.

The Review Board finds that Points 1, 2, 3 and 5 from the Respondent's brief are procedural issues that do not come within the scope of the Board's review, that scope being to determine whether a Committee's Determination and penalty are consistent with the Committee's findings of fact and its conclusions and whether the penalty is appropriate. The Review Board does have the authority, however, to remand cases to the Hearing Committee. In cases in which we feel

that there was some mistake or defect in a hearing which would prevent the Board from completing our review, we may use our remand authority to order further proceedings to correct those defects, **Matter of Dias**, ARB 93-93, November 8, 1993; **Matter of Pirodsky**, ARB 92-59-A, September 16, 1992. The Review Board, therefore, considered the issues raised in the Respondent's brief in Points 1, 2, 3 and 5 to determine whether a remand was necessary in this case.

The Review Board does not see any ground on which to remand this case to the Hearing Committee for further proceedings. As to the Respondent's Point 1, the Hearing Committee was not constituted improperly. Physician Assistants are not licensed Physicians and so they serve properly on Physician hearing committee's as lay persons. As to the Respondent's Point 2, the normal procedure in the expedited format of a direct referral proceeding is to permit both parties to submit documents for the Hearing Committee review prior to the hearing date. The Respondent could have also used that expedited procedure to submit his mitigation documents to the Hearing Committee prior to the hearing. As to the Respondent's Point 3, there is no procedure in Professional Medical Conduct proceedings in which counsel question Hearing Committee members as if the panel members were potential jurors. As to the Respondent's Point 5, the Respondent had an opportunity to present extensive documentation to the Hearing Committee in mitigation. The Hearing Committee can not, however, reconsider the administrative adjudication which is the basis for a direct referral and the Hearing Committee is not required to hear witnesses who would present evidence to challenge the underlying adjudication.

In his Point 4, the Respondent argues that the Petitioner had no basis to bring this proceeding. Jurisdiction is a procedural matter which is beyond the scope of the Board's review. The Board did, however, consider the Respondent's arguments on his Point 4, as a contention that the Hearing Committee's Determination that the Respondent was guilty of misconduct is not consistent with the Hearing Committee's findings concerning the Utah administrative adjudication. The Respondent argues that there was no ground for a direct referral proceeding against Dr. Wolkoff, because direct referrals must be based on action by another jurisdiction against a medical license and the Utah action was not against Dr. Wolkoff's medical license.

The Review Board finds no merit in the Respondent's argument on this issue and we

sustain the Hearing Committee's Determination that the Respondent was guilty of misconduct arising from the Utah action. Education Law Section 6530(9)(d) provides that a physician is guilty of misconduct if the Respondent had disciplinary action taken against his license by the duly authorized disciplinary agency of another state for conduct that would constitute misconduct in New York. Education Law Section 6530(9)(b) makes it misconduct for a physician to be found guilty of improper professional practice or professional misconduct by the duly authorized agency of another state for conduct that would constitute misconduct in New York. The Petitioner charged the Respondent with misconduct under both the above mentioned provisions of the Education Law based upon the Utah action and with misconduct under both Education Law sections arising out of the California action. The action against the Respondent in Utah was clearly an action against the Respondent's medical license. The Utah action was also an action by a duly authorized agency of another state, arising from improper professional conduct that would constitute misconduct in New York. The Respondent is, therefore, guilty of misconduct arising from the Utah action under both Education Law Sections 6530(9)(b) and 6530(9)(d).

As to the penalty, the Review Board overturns the hearing Committee's penalty that would suspend the Respondent from practice pending an evaluation and any necessary retraining at the Physician Prescribed Education Program (PPEP), because we do not find that penalty is consistent with the findings concerning the nature of the Respondent's misconduct and because we do not believe the penalty is appropriate to protect the public in view of the dangerous pattern of the Respondent's practice. The Review Board votes 3-0 to revoke the Respondent's license to practice medicine in New York State.

At the outset, the Board notes that our Determination on the penalty is more severe than the penalty which Utah imposed and we note that a similar penalty has now been overturned by a court in California. The Board agrees with the Hearing Committee, however, that the question in this proceeding is how New York must penalize the Respondent for his misconduct in Utah, pursuant to the Board's responsibility to protect the people of New York. We are not bound by the sanctions which Utah and California deem appropriate.

The Board overrules the Hearing Committee's evaluation and retraining penalty

because we do not believe the Respondent's deficiencies can be improved by additional education. The Respondent prescribed excessive doses of controlled substances to persons whom he knew to have histories of substance abuse and whom he suspected of trying to obtain drugs for improper reasons. Excessive prescribing in itself is wrong and dangerous, and prescribing excessive quantities of controlled substances to known substance abusers is an abuse of a physician's responsibilities and of the public trust in the medical profession. The Respondent's admissions in the Utah proceeding and his testimony at the direct referral hearing support an inference that rather than treating patients for actual medical conditions, the Respondent was in fact facilitating his patients' efforts to obtain drugs to satisfy their addictions. The Review Board does not believe that such physicians belong in New York and we feel that the most severe penalty, revocation, is appropriate in this case.

ORDER

NOW, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Hearing Committee on Professional Medical Conduct's May 5, 1994 Determination finding Dr. Kenneth Wolkoff guilty of professional misconduct is **sustained**.

2. The Hearing Committee's Determination to suspend the Respondent's license to practice medicine in New York State while the Respondent undergoes retraining is **overruled**.

3. The Respondent's license to practice medicine in New York State is **revoked**.

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF KENNETH A. WOLKOFF, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Wolkoff,

DATED: Brooklyn, New York

_____, 1994



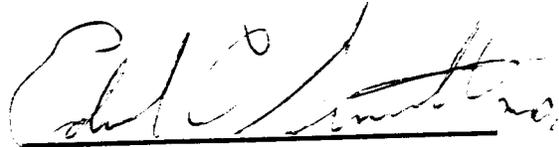
WINSTON S. PRICE, M.D.

IN THE MATTER OF KENNETH A. WOLKOFF, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Wolkoff,

DATED: Albany, New York

Aug 3, 1994

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF KENNETH A. WOLKOFF, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Wolkoff.

DATED: Albany, New York
12 Aug, 1994


WILLIAM A. STEWART, M.D.

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

**IN THE MATTER
OF
KENNETH A. WOLKOFF, M.D.**

**DETERMINATION
AND
ORDER**

NO. BPMC-94-64

A Notice of Hearing and Statement of Charges, both dated January 21, 1994, were served upon the Respondent, Kenneth A. Wolkoff, M.D. **PETER D. KEUMMEL, R.P.A.** (Chair), **STANLEY L. GROSSMAN, M.D., and RALPH LEVY, D.O.**, 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. **CHRISTINE C. TRASKOS, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. A hearing was held on February 23, 1994. The Department of Health appeared by **TERRENCE SHEEHAN, ESQ., ASSOCIATE COUNSEL**. Respondent was represented by Schneider, Harris, Harris & Furman, Esqs., **ROBERT HARRIS, ESQ.**, of counsel. Evidence was received and witnesses sworn and heard 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses 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.

1. Respondent was authorized to practice medicine in New York State on June 17, 1977 by the issuance of license number 130957 by the New York State Education Department (Pet. Ex. #4).

2. On April 9, 1991, Respondent signed a Stipulation and Order with the State of Utah Division of Occupational and Professional Licensing in which Respondent admitted allegations of excessive prescribing of controlled substances, prescribing to individuals he knew were drug dependent and knowingly prescribing controlled substances in excess of medically appropriate quantities in his treatment of three patients (Pet. Ex. 2).

3. Pursuant to the terms of the above-mentioned Stipulation and Order with the Utah Division of Occupational and Professional Licensing, Respondent's license to prescribe controlled substances was placed on probation for 3 years and Respondent was required to attend medical education courses on the proper prescription of controlled substances and patient record keeping (Pet. Ex. #2).

4. By an Order dated May 11, 1993, the Medical Board of California revoked Respondent's license to practice medicine in the State of California pursuant to an administrative hearing held on January 5, 1992 at which Respondent appeared and was represented by counsel. The Board adopted the decision of the Administrative Law Judge which found that "Clear and convincing evidence to a reasonable certainty establishes cause for discipline of Respondent's license pursuant to Business and Professional Code sections 2234 and 2305" (Dept. Ex. 3).

5. Respondent testified that he took all of the appropriate courses required by the Utah Division of Occupational and Professional Licensing under the terms of his probation (T. 49).

6. Respondent testified that to his knowledge, there is no legal impediment to his license to practice medicine in the State of Utah (T. 50).

7. Respondent testified that he has not engaged in the formal practice of medicine anywhere since April of 1991 and he has not practiced medicine in the State of New York since 1984 (T. 65, 66, 71, 72).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department has met its burden of proof. Respondent admitted to the allegations in his Stipulation and Order with the Utah Division of Occupational and Professional Licensing of excessive prescribing of controlled substances, prescribing to individuals he knew were drug dependent and knowingly prescribing controlled substances in excess of medically appropriate quantities in his treatment of three patients. Education Law Section 6530(9)(d) defines professional misconduct in part as ..."having disciplinary action taken against his

or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State;" In addition, the California Medical Board found clear and convincing evidence to revoke Respondent's license. Section 6530(9)(b) defines professional misconduct as "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." As a result, the Hearing Committee unanimously voted to sustain the specification of misconduct alleged by the Department.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended until such time as Respondent completes an evaluation by the Physician Prescribed Education Program (PPEP) of the Department of Family Medicine, SUNY Health Science Center, 479 Irving Avenue, No. 200, Syracuse, New York 13210. The results of the Phase I evaluation shall be forwarded to the Office of Professional Medical Conduct. The Office of Professional Medical Conduct will then refer Respondent to the designated facility for Phase II re-training, if the results of the Phase I evaluation indicates that Respondent is a candidate for re-education. Upon completion of the Phase I evaluation and the Phase II re-training (if necessary), the suspension of Respondent's license shall be stayed. However, as a condition for the stay of suspension, Respondent for a period of three years, shall not prescribe controlled substances for patients and shall comply with the monitoring and all other terms of probation as specified and attached to this Determination and Order in Appendix II. This determination was reached upon due

consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The record established that Respondent's practice of prescribing excessive doses of controlled substances has the potential of placing patients in grave risk of harm. The Hearing Committee has an independent responsibility for determining the sanction to be imposed upon Respondent's New York medical license, due to his misconduct. It is not bound by the decisions of the Utah or California Medical Boards. The Hearing Committee has a genuine concern regarding Respondent's professional competency to practice medicine in New York State after his absence from the formal practice of medicine for at least three years. Therefore, the Hearing Committee determined that suspension, re-certification and probation are the appropriate sanctions under the circumstances.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** from the effective date of this Determination and Order.
3. Respondent shall complete the Phase I evaluation of the Physician's Prescribed Educational Program (PPEP) of the Department of family Medicine, SUNY Health Science Center;
4. The results of the Phase I evaluation shall be forwarded to the Office of Professional Medical Conduct (OPMC).

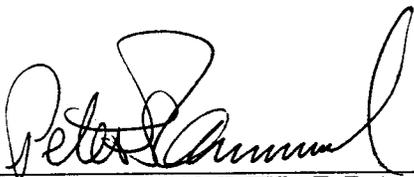
5. The OPMC shall refer Respondent to the designated facility for Phase II retraining, if the results of the Phase I evaluation indicate that Respondent is a candidate for such retraining, and he shall satisfactorily complete same.

6. Upon completion of the Phase I evaluation and the Phase II re-training if so warranted by the OPMC, the suspension of Respondent's license shall be **STAYED** and Respondent placed on probation for three years. The complete terms of probation are attached to this Determination and Order in Appendix II and are incorporated herein;

7. Respondent's probation shall be supervised by the OPMC.

8. Respondent shall not prescribe controlled substances for patients during the aforementioned three year probationary period.

DATED: Albany, New York
May 2, 1994.


PETER D. KUEMMEL, R.P.A. (Chair)

STANLEY L. GROSSMAN, M.D.
RALPH LEVY, D.O.

TO: Kenneth Wolkoff, M.D.
PO Box 358
Ocean City, New York 11770

Robert Harris, Esq.
Schneider, Harris, Harris & Furman, Esqs.
1015 Broadway
Woodmere, New York 11598

Diane Abeloff, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza, 6th Floor
New York, N.Y. 10001

APPENDIX I

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

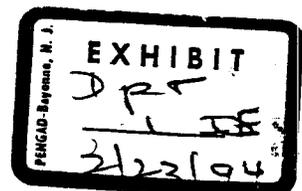
-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: KENNETH A. WOLKOFF, M.D. : PROCEEDING
: :
-----X

TO: KENNETH A. WOLKOFF, M.D.
P.O. Box 358
Ocean City, New York 11770

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of February, 1994 at 11:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before February 10, 1994 .

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 February 10, 1994 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: New York, New York

Jan 21, 1994

Chris Stern Hyman for: _____

CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Terrence Sheehan
Associate Counsel
(212) 613-2601

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

-----X
IN THE MATTER : STATEMENT
OF : OF
KENNETH A. WOLKOFF, M.D. : CHARGES
-----X

KENNETH A. WOLKOFF, M.D., the Respondent, was authorized to practice medicine in New York State on June 17, 1977 by the issuance of license number 130957 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 from P.O. Box 358, Ocean City, New York 11770.

FACTUAL ALLEGATIONS

A. On April 10, 1991, the Utah Division of Occupational and Professional Licensing, a duly authorized professional disciplinary agency, found Respondent guilty of improper professional practice or professional misconduct. The conduct upon which this finding was based, if committed in New York State, would have constituted professional misconduct under the laws of New York State.

1. The Utah Division upheld, and Respondent admitted, allegations of excessive prescribing of controlled

substances, prescribing to individuals he knew were drug dependent and knowingly prescribing controlled substances in excess of medically appropriate quantities in his treatment of three patients. Respondent further admitted that these allegations constituted violations of Utah Code §58-12-36(11), (18); §58-37-6(4)(a)(vi); §58-37-8(2)(9)(vi); and R153-37-8(A)(2)(D)(8); R153-37-9(A); and R153-37-10(B), (F) of the Controlled Substances Rules.

2. Respondent agreed to the imposition of the penalty of placing his license to prescribe controlled substances on probation for a period of three years and to the requirement that he attend certain continuing medical education courses.
3. Respondent's conduct would have constituted professional misconduct in New York State pursuant to N.Y. Education Law §6530(2), (3), (5), and/or (32) (McKinney Supp. 1994); i.e. practicing the profession fraudulently or beyond its authorized scope, practicing the profession with negligence on more than one occasion, practicing the profession with incompetence on more than one occasion, and failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

B. By an Order issued May 11, 1993, the California Medical Board, a duly authorized professional disciplinary agency, revoked the Respondent's license to practice medicine in the State of California.

1. The California Medical Board held a hearing on January 5, 1993, at which Respondent appeared and was represented by counsel. A hearing decision issued February 8, 1993 found that clear and convincing evidence existed warranting the revocation of Respondent's license.
2. Respondent's conduct would have constituted professional misconduct in New York State pursuant to N.Y. Education Law §6530(2), (3), (5), and/or (32) (McKinney Supp. 1994); i.e. practicing the profession fraudulently or beyond its authorized scope, practicing the profession with negligence on more than one occasion, practicing the profession with incompetence on more than one occasion, and failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

HAVING DISCIPLINARY ACTION TAKEN BY ANOTHER STATE

Respondent is charged with professional misconduct in violation of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994) in that Respondent had disciplinary action taken against his license to practice medicine by a duly authorized professional disciplinary agency of another state, where the conduct resulting in such disciplinary action 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 Paragraphs A and A.1, A.2, and/or A.3.
2. The facts in Paragraphs B and B.1 and/or B.2.

THIRD AND FOURTH SPECIFICATIONS

HAVING BEEN FOUND GUILTY OF IMPROPER
PROFESSIONAL PRACTICE OR PROFESSIONAL
MISCONDUCT BY ANOTHER STATE

Respondent is charged with professional misconduct in violation of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1994) in that Respondent was 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:

3. The facts in Paragraphs A and A.1, A.2 and/or A.3.
4. The facts in Paragraphs B and B.1 and/or B.2.

DATED: New York, New York

1/21/94

Chris Stern Hyman for:

CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct

APPENDIX II TERMS OF PROBATION

1. Dr. Wolkoff 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 imposed by law and by his profession.
2. Dr. Wolkoff shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Wolkoff shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Dr. Wolkoff leaves New York to reside or practice outside the State, Dr. Wolkoff shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.
5. Dr. Wolkoff's probation shall be supervised by the Office of Professional Medical Conduct.
6. Dr. Wolkoff shall complete the Phase I evaluation of the Physician's Prescribed Educational Program (PPEP) of the Department of Family Medicine, SUNY Health Science Center.
7. The results of the Phase I evaluation shall be forwarded to the Office of Professional Medical Conduct.
8. The Office of Professional Medical Conduct shall refer Dr. Wolkoff to the designated facility for Phase II retraining, if the results of the Phase I evaluation indicate that Respondent is a candidate for such retraining, and he shall satisfactorily complete same.
9. Dr. Wolkoff shall not prescribe controlled substances for patients during his three year period of probation.
10. Dr. Wolkoff shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Wolkoff's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.
11. For the first year of probation, Dr. Wolkoff shall have bi-monthly, and for the remaining two years, quarterly meetings with a monitoring physician who shall review his practice. The monitoring physician shall be a board-certified family practitioner who has been in practice as such for at least five years, selected by Dr. Wolkoff and subject to the approval of the Office of Professional Medical Conduct. This monitoring physician shall review randomly selected medical records and evaluate whether Dr. Wolkoff's medical care comports with generally accepted standards of medical practice. Dr. Wolkoff shall not practice medicine in New York State until an acceptable monitoring physician is approved by the Office of Professional Medical Conduct.

12. Dr. Wolkoff shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.

13. Dr. Wolkoff shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Wolkoff elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

14. If there is full compliance with every term set forth herein, Dr. Wolkoff may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Wolkoff pursuant to New York Public Health Law Section 230(19) or any other applicable laws.

15. If, as a result of the Phase I evaluation by the PPEP, the Office of Professional Medical Conduct determines that Respondent is not a candidate for retraining, or if he is considered a suitable candidate but no satisfactory retraining program is available, as a condition for the stay of suspension Respondent shall comply with the monitoring and all other terms of probation as specified in Sections **ONE** through **THIRTEEN**, as set forth above.