



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

March 30, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Thomas Plachy, Jr., M.D.
a/k/a Robert T. Plachy, M.D.

Redacted Address

Wilfred T. Friedman, Esq.
60 East 42nd Street – 40th Floor
New York, New York 10165

Robert Bogan, Esq.
NYS Department of Health
433 River Street 4th Floor
Troy, New York 12180

RE: In the Matter of Robert Thomas Plachy, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-55) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER

OF

ROBERT THOMAS PLACHY, JR., M.D.
a/k/a Robert T. Plachy, M.D.

DETERMINATION

AND

ORDER

BPMC #09-55

COPY

A hearing was held on March 18, 2009, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated October 21, 2008, were served upon the Respondent, **Robert Thomas Plachy, Jr., M.D., a/k/a Robert T. Plachy, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D.**, Chairperson, **Cindy Hoffman, D.O.**, and **Thomas W. King, Jr., M.P.A., P.E.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Wilfred T. Friedman, 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.

BACKGROUND

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

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

WITNESSES

For the Petitioner:

None

For the Respondent:

Robert Thomas Plachy, Jr., M.D.
Mr. Jerry Dolan
Rev. Steven E. Howarth
Ms. Pamela Granda

FINDINGS OF FACT

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

1. Robert Thomas Plachy, Jr., M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1991, by the issuance of license number 185894 by the New York State Education Department (Petitioner's Ex. 4).

2. On December 12, 2007, in the Southampton Town Court, Criminal Part, Suffolk County, New York, the Respondent was found guilty of Driving while intoxicated, in violation of New York Vehicle and Traffic Law Section 1192.03, a misdemeanor, and was sentenced to a \$1,000.00 fine and a \$190.00 surcharge. (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent's interaction with the Petitioner did not begin with this disciplinary proceeding. On May 9, 2001, the Respondent signed a Temporary Surrender of License ("Temporary Surrender") (Petitioner's Ex. 6). In this document, the Respondent stated that he was "at present incapacitated for the practice of medicine." The cause of the incapacity was alcoholism. In the document, it is stated that the Respondent's license will remain inactive until he accomplishes the following:

I understand that my license shall be restored to me only upon a showing to the satisfaction of a Committee of Professional Conduct of the State Board for Professional Medical Conduct that I am no longer incapacitated for the active practice of medicine. (Petitioner's Ex. 6).

This type of committee is commonly called a restoration committee.

On September 25, 2001, the Petitioner issued a Consent Order based on a Consent Agreement and Order ("Agreement") (Petitioner's Ex. 7). The Respondent had

been charged with negligence on more than one occasion. The Agreement states that the Respondent's license will be suspended until a restoration proceeding regarding the Temporary Surrender restores the Respondent's license to active status.

The Respondent appeared before a restoration committee on May 6, 2003. The restoration committee declined to restore the Respondent's license because the committee was concerned about the Respondent's diagnosis of ADHD and wanted more information about the condition and whether there were non-addictive medications to treat it. (Petitioner's Ex. 8).

The Respondent appeared again before the restoration committee on July 25, 2006, October 17, 2006 and March 6, 2007. The restoration committee once again declined to restore the Respondent's license. A drug screen on October 5, 2006, disclosed the presence of ethyl glucuronide (EtG) in the Respondent's urine. This is an indicator of recent alcohol use. The committee rejected the Respondent's theory that he had absorbed the EtG from driveway asphalt coating and from gasoline containing ethanol. (Petitioner's Ex. 9).

The Petitioner recommended that the Respondent's license to practice medicine be revoked. The Hearing Committee is not persuaded by the Petitioner's reasons. It is true that the Respondent drove while intoxicated on July 29, 2007, but that was twenty months ago and the evidence is convincing that the Respondent has not had a drink since then. Testimony from the Respondent, from Mr. Jerry Dolan, the Respondent's therapist, from Rev. Stephen E. Howarth, the Respondent's Alcoholics Anonymous sponsor, and from Ms. Pamela Granda, the Respondent's case manager at the Committee for Physician Health, leads to the conclusion that the Respondent has learned to control his alcoholism and that he no longer drinks. The results of countless random urine screens from

December 14, 2007, through February 24, 2009, are all negative and corroborate the testimony of these witnesses (Respondent's Ex. E).

The Petitioner challenged the Respondent's credibility by noting that he gave inconsistent testimony about giving EKG tests on a job he had after he surrendered his license and by citing the false excuse given to the restoration committee about why he had EtG in his urine. It is true that he gave two versions of how many EKGs he performed, but this one discrepancy about a minor detail of a job held years ago is not enough to conclude that the Respondent is not a credible witness. As for the explanation for the EtG in the Respondent's urine, this excuse was given when the Respondent was still drinking. Lying frequently accompanies alcoholism. Now that the Respondent is sober, his willingness to lie in the past proves nothing reliable about the present.

After the Respondent surrendered his license, he got a job at an insurance company as an insurance evaluator. He visited potential insurance claimants and measured their height, weight and blood pressure, took their medical histories and drew blood. He may have performed a small number of EKGs. The Petitioner claimed that this was practicing medicine without a license. The Petitioner cited no authority for its position. It simply stated an unsupported conclusion. The Hearing Committee is unconvinced that the Respondent's job duties constituted the practice of medicine.

The revocation of the Respondent's license will accomplish nothing. He cannot practice medicine presently and will not be able to do so until a restoration committee is convinced that he is no longer impaired. This provides the public with as much protection as any penalty this Hearing Committee could impose. The restoration committee is in the best position to determine if and when the Respondent is ready to return to the practice of medicine. A revocation of his license, which cannot be vacated for three years, would tie the hands of the restoration committee for no good reason. There is no penalty that can

be imposed that increases the safety of the public and, therefore, no penalty will be imposed.

ORDER

IT IS HEREBY ORDERED THAT:

1. No penalty is imposed on the Respondent, Robert Thomas Plachy, Jr., M.D.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York
3-25, 2009

Redacted Signature

Lyon M. Greenberg, M.D.
Chairperson

Cindy Hoffman, D.O.
Thomas W. King, Jr., M.P.A., P.E.

APPENDIX I

EV 2/18/08 JW

IN THE MATTER
OF
ROBERT THOMAS PLACHY, JR., M.D.
aka ROBERT T. PLACHY, M.D.
PM-08-03-1740-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ROBERT THOMAS PLACHY, JR., M.D.
aka ROBERT T. PLACHY, M.D.

Redacted Address

ROBERT THOMAS PLACHY, JR., M.D.
aka ROBERT T. PLACHY, M.D.

Redacted Address

ROBERT THOMAS PLACHY, JR., M.D.
aka ROBERT T. PLACHY, M.D.

Redacted Address

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§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 16th day of December, 2008, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

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 who shall be an attorney admitted to practice in New York state. 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. SEAN D. O'BRIEN, 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 ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), 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 New York State Administrative Procedure Act §401 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: Albany, New York

Oct. 21, 2008

Redacted Signature

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

ROBERT THOMAS PLACHY, JR., M.D.
aka ROBERT T. PLACHY, M.D.
PM-08-03-1740-A

STATEMENT

OF

CHARGES

ROBERT THOMAS PLACHY, JR., M.D. aka ROBERT T. PLACHY, M.D., Respondent, was authorized to practice medicine in New York state on July 1, 1991, by the issuance of license number 185894 by the New York State Education Department.

FACTUAL ALLEGATION

A. On or about December 12, 2007, in the Southampton Town Court, Criminal Part, Suffolk County, New York, Respondent was found guilty of Driving while intoxicated, in violation of New York Vehicle and Traffic Law, Section 1192.03, a misdemeanor, and was sentenced to a \$1,000.00 fine and a \$190.00 surcharge.

SPECIFICATION

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

1. The facts in Paragraphs A.

DATED: *Oct. 21*, 2008
Albany, New York

Redacted Signature

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