



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

November 29, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street
Hedley Park Place – 4th Floor
Troy, New York 12180

James D. Perkins, M.D.
3 Oxford Drive
Apartment 12
Latham, New York 12110

Paul Maher, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street
Hedley Park Place – 4th Floor
Troy, New York 12180

RE: In the Matter of James D. Perkins, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-296) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

LC177626

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:

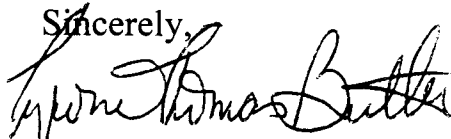
James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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
JAMES D. PERKINS, M.D.

DETERMINATION
AND
ORDER

ORDER # 99-296

COPY

A Notice of Referral Proceedings and Statement of Charges, both dated October 19, 1999, were served upon the Respondent, **JAMES D. PERKINS, M.D.**

MICHAEL R. GOLDING, M.D., Chairperson, **DONNA B. O'HARE, M.D.** and **CHARLOTTE S. BUCHANAN, ESQ.**, 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 November 17, 1999, at the Offices 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 ROBERT 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 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)(a)(iii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner:	None
For the Respondent:	James D. Perkins, the Respondent

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 of 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. **JAMES D. PERKINS, M.D.**, the Respondent, was authorized to practice medicine in New York state on March 8, 1989, by the issuance of license number 177626 by the New York State Education Department. (Pet's. Ex. 4)

2. On September 16, 1998, in the Circuit Court, Robertson County, Tennessee, the Respondent was found guilty of Reckless Driving in violation of Tennessee Code annotated Title 55, Chapter 10, §55-10-205, a Class B Misdemeanor. He was fined \$350.00, sentenced to eleven months and 29 days in jail, all except 2 days suspended, and required to contribute \$250 to the Tennessee Highway Patrol Camera Fund. (Pet's. Exs. 5, 6 and 7)

HEARING COMMITTEE CONCLUSION

The Hearing Committee concludes that the conduct resulting in the Tennessee conviction against the Respondent would constitute a crime under the laws of New York state. New York State Vehicle and Traffic Law §1212 (reckless driving, a misdemeanor).

VOTE OF THE HEARING COMMITTEE SPECIFICATION

Respondent violated New York Education §6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed in New York state, constitutes a crime the laws of New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DELIBERATIONS

The Respondent testified at the instant hearing. He was a very credible witness and his testimony is supported by the evidence.

The Respondent was found guilty of reckless driving in the state of Tennessee.

He fell asleep at the wheel while driving and was involved in an accident. There was no alcohol or drugs involved, there was no intent on the part of the Respondent to cause an accident and there were no personal injuries as a result of the accident. **IT WAS AN ACCIDENT, PURE AND SIMPLE.**

The Office of Professional Medical Conduct became aware of the incident because the Respondent voluntarily reported it when he filed his biennial New York Registration Application.

The Hearing Committee determines unanimously (3-0), that in the interest of justice, no action should be taken against the Respondent's New York state medical license.


ORDER

IT IS HEREBY ORDERED THAT:

1. No action should be taken against the Respondent's license to practice medicine in the state of New York.
2. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Troy, New York

22 Nov 1999


MICHAEL R. GOLDING, M.D.
Chairperson

DONNA B. O'HARE, M.D.
CHARLOTTE S. BUCHANAN, ESQ.

APPENDIX I

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

**IN THE MATTER
OF
JAMES D. PERKINS, M.D.**

NOTICE OF
OF
REFERRAL
PROCEEDING

TO: JAMES D. PERKINS, M.D.
3 Oxford Lane
Latham, NY

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17th day of November, 1999 at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the 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, 5th Floor, 433 River Street, Troy, New York 12180, 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 November 8, 1999.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you must file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before November 8, 1999 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable

period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT SUSPENDS OR REVOKES YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE
AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT
YOU IN THIS MATTER.

DATED: Albany, New York
October 19, 1999



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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518)402-0820

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

**IN THE MATTER
OF
JAMES D. PERKINS, M.D.**

STATEMENT
OF
CHARGES

JAMES D. PERKINS, M.D., the Respondent, was authorized to practice medicine in New York state on March 8, 1989, by the issuance of license number 177626 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 16, 1998, in the Circuit Court, Robertson County, Tennessee, the Respondent was found guilty of Reckless Driving in violation of Tennessee Code annotated Title 55, Chapter 10, §55-10-205, a Class A Misdemeanor, and was fined \$350.00, sentenced to eleven months and 29 days in jail, all except 2 days suspended, and required to contribute \$250 to the Tennessee Highway Patrol Camera Fund.

B. The conduct resulting in the Tennessee conviction against Respondent would constitute a crime under the laws of New York state, pursuant to the following sections of New York State Vehicle and Traffic law:

1. New York State Vehicle and Traffic §1212 (reckless driving, a misdemeanor).

SPECIFICATION

Respondent violated New York Education §6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed in New York state, constitutes a crime the laws of New York state, in that Petitioner charges:

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

DATED: *Oct. 19*, 1999
Albany, New York


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