



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

August 28, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph Huberty, Esq.
NYS Department of Health
Corning Tower-Room 2429
Empire State Plaza
Albany, New York 12237

James Resti, Esq.
271 Montgomery Street-Suite 217
Syracuse, New York 13202

Donovan Wayne Christie, M.D.

Donovan Wayne Christie, M.D.

Effective Date: 09/04/96

RE: In the Matter of Donovan Wayne Christie, M.D.

Dear Mr. Huberty, Mr. Resti and Dr. Christie:

Enclosed please find the Determination and Order (No. 96-197) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
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.

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 all action 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
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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:nm
Enclosure

COPY

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

-----X
IN THE MATTER : DETERMINATION
OF :
DONOVAN WAYNE CHRISTIE, M.D. : ORDER
-----X

BPMC-96-197

A Notice of Referral Proceeding, dated March 12, 1996 and an Amended Statement of Charges, dated June 5, 1996, were served upon the Respondent, Donovan Wayne Christie, M.D. **ARSENIO G. AGOPOVICH, M.D. (Chair), AARON B. STEVENS, M.D., and MARYCLAIRE B. SHERWIN**, 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Joseph Huberty, Esq., Assistant Counsel. The Respondent appeared by James Resti, Esq., of Counsel. A hearing was held on June 12, 1996. 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

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d) [having had disciplinary action taken by a sister state], Education Law §6530(2) [fraudulent practice], and Education Law §6530(21) [willfully filing or making a false report]. The allegations of fraud and filing of false reports refer to allegedly false statements made on two separate registration applications in New York. Copies of the Notice of Referral Proceeding and Amended Statement of Charges are attached to this Determination and Order in Appendix I.

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. Donovan Wayne Christie, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on May 29, 1991 by the issuance of license number 185561 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1995 through December 31, 1997 at [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Pet. Ex. #3).

2. Respondent received his medical degree from the Albert Einstein College of Medicine in 1987. He completed a joint residency in internal medicine and pediatrics and is board-certified in both specialties. He also received an MBA from the University of Wisconsin-Madison. Respondent is currently employed as Senior Medical Director for CIGNA Healthcare of North Carolina. (T. pp. 15-19).

3. Upon the written consent of Respondent, on or about August 14, 1991, the New Jersey State Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners (hereinafter "New Jersey Board") issued a Final Order of Reprimand to Respondent. The matter was presented to the New Jersey Board on inquiry into certain medical practices of Respondent. The Final Order of Reprimand makes no reference to the filing of any charges against Respondent. (Pet. Ex. #2).

4. Respondent was reprimanded by the New Jersey Board for misrepresentation of his medical office setting of the services rendered to one Flavio Amed Soliz, M.D., for marked overcharging, for inordinately protracted reported treatment of soft tissue injuries without consultation, and for failure to keep contemporaneous progress notes of the patient's treatment. Respondent was also assessed investigative costs of \$1,887.90. (Pet. Ex. #2).

5. The New Jersey Order further provided that in the event that Respondent intends to practice medicine within the State of New Jersey, prior to actually commencing said practice he shall give written notice to the New Jersey Board and shall appear before a Committee of the Board and establish that he is

fit and competent to practice. (Pet. Ex. #2).

6. The conduct underlying the New Jersey disciplinary action involved medical care rendered to Dr. Soliz by Respondent, following an automobile accident involving Dr. Soliz on or about January 19, 1989. At the time, both Respondent and Dr. Soliz were residents at Morristown Memorial Hospital (hereinafter "Morristown"). Dr. Soliz was examined in the Morristown emergency room, where no fracture was detected. (Pet. Ex. #2).

7. One day later, Dr. Soliz consulted Respondent for medical treatment complaining of headache and paresthesia of the right arm. Over the next nine months, Respondent regularly treated Dr. Soliz with hot packs, massages and range of motion therapy. Respondent did not charge Dr. Soliz for his services. (T. 26-27; Pet. Ex. #2).

8. By letter dated January 21, 1990, Respondent submitted to Dr. Soliz' attorney a treating doctor's report and a bill in the amount of \$3,080.00 for treatment rendered from January 19, 1989 through November 4, 1989. The bill was submitted on letterhead stationary reading "Donovan W. Christie, M.D., Morristown Memorial Hospital, 100 Franklin Street, Morristown, New Jersey". However, as a second-year resident, Dr. Christie did not, in fact maintain a private office at the hospital. (Pet. Ex. #2).

9. The stationary was given to Respondent, as well as the other second-year residents, by a representative of Merck Pharmaceutical, for use in preparing resumes for employment applications. (T. 30-31; Pet. Ex. #2).

10. Respondent never received any remuneration for the

medical services rendered to Dr. Soliz. (T. 31).

11. On or about October 4, 1992 Respondent made application to renew his medical registration with the New York State Education Department for the period January 1, 1993 through December 31, 1994. The renewal application required an answer to the following question: "Since you last registered, has any state other than New York instituted charges against you for professional misconduct, incompetence or negligence or revoked, suspended or accepted surrender of a professional license held by you?". Respondent answered "NO" to this question. (Pet. Ex. #4).

12. On or about September 26, 1994 Respondent made application to renew his medical registration with the New York State Education Department for the period January 1, 1995 through November 30, 1997. The renewal application required an answer to the following question: "Since you last registered, has any state other than New York instituted charges against you for professional misconduct, unprofessional conduct, incompetence or negligence or revoked, suspended or accepted surrender of a professional license held by you?". Respondent answered "NO" to this question. (Pet. Ex. #5).

13. Respondent testified that he has subsequently renewed his New Jersey medical license without any restrictions. He further testified that he fully informed the North Carolina licensing authority regarding his New Jersey disciplinary action upon seeking licensure in that state. (T. pp. 38, 68).

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 Petitioner has charged Respondent with three specifications of professional medical conduct. The Hearing Committee unanimously concluded that the First Specification (having disciplinary action taken by another state) should be sustained. The preponderance of the evidence demonstrates that Respondent was reprimanded by the New Jersey Board through a consent agreement dated August 14, 1991. Respondent's conduct, as found by the New Jersey Board would, if committed in New York State, constitute professional misconduct in violation of Education Law §6530(3) and (5) [negligence on more than one occasion and incompetence on more than one occasion].

The Second and Third Specifications relate to the allegedly false statements made by Respondent on two re-registration applications. For the reasons set forth below, the Hearing Committee unanimously voted to dismiss both specifications of professional misconduct.

Respondent submitted re-registration applications to the New York State Education Department on or about October 4, 1992 and on or about September 26, 1994. On both applications, questions regarding out-of-state disciplinary actions were

which inquired about the institution of disciplinary charges against Respondent, or the revocation, suspension or surrender of a medical license in another jurisdiction.

The phrase "instituted charges" has a specific connotation in the context of disciplinary proceedings such as this one. It indicates a formal specification of alleged wrongdoing on an individual's part and is connected to the beginning of a formal adjudicatory proceeding. Such a specification of alleged wrongdoing is presented in a written document, which may be known as an accusation, a verified complaint, or (as is the case in New York) a statement of charges. It is clear from the record that such formal charges against Respondent were never instituted by the New Jersey Board.

The records of the New Jersey Board indicate that the matter involving Respondent was handled in an informal manner, prior to the institution of any formal disciplinary proceedings. The Final Order of Reprimand (Pet. Ex. #2) notes that the matter was presented to the New Jersey Board "on inquiry" into certain medical practices of Respondent. In addition, the Final Order notes that, rather than being charged and tried in a formal hearing, Respondent was merely "invited" to appear and state his version of events. (Pet. Ex. #2, p.3). There is absolutely no

¹The registration application for the period January 1, 1993 through December 31, 1994 asked the following question: "Since you last registered, has any state other than New York *instituted charges* against you for professional misconduct, incompetence or negligence or revoked suspended or accepted surrender of a professional license held by you?". (Emphasis added). The question on the 1995-1997 application was identical except for the addition of the phrase "unprofessional conduct", in the listing of potential disciplinary actions.

version of events. (Pet. Ex. #2, p.3). There is absolutely no evidence in this record that charges were instituted against Respondent by the New Jersey Board. In addition, there is no evidence that Respondent's New Jersey medical license was revoked, suspended or surrendered.

The Hearing Committee unanimously concluded Respondent's answer to the questions at issue on the two registration applications were factually correct. As a result, the Committee further concluded that his submission of the two applications constituted neither the fraudulent practice of medicine nor a willful filing or making of false reports. Accordingly, the Hearing Committee voted to dismiss the Second and Third Specifications.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent should receive a censure and reprimand in satisfaction of the charges brought against him. 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 Hearing Committee has an independent responsibility to determine the appropriate penalty to be imposed upon Respondent. Nevertheless, the Committee took some guidance from the actions of the New Jersey Board. The New Jersey Board imposed a reprimand, noting that the youth and inexperience of Respondent may well have contributed to the circumstances in which he found himself embroiled.

The Hearing Committee also believes that Respondent found himself in a situation for which he was not fully prepared, due to his inexperience. Moreover, the Committee had an extensive opportunity to hear Respondent, and observe his demeanor. The Committee is satisfied that Respondent is genuinely remorseful regarding his mistakes, and has already suffered substantially, in terms of emotional impact as well as financially. The Committee also took note of the fact that Respondent has been able to go beyond his mistakes and establish a successful career as the medical director of an HMO in North Carolina.

Under the totality of the circumstances, the Hearing

Committee unanimously determined that revocation - the sanction sought by Petitioner - would be unconscionably harsh. A censure and reprimand will adequately punish Respondent for his mistakes, yet allow him to continue his career. No further action by the Board is warranted under these circumstances.

ORDER

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

1. The First Specification of professional misconduct, as set forth in the Amended Statement of Charges (Petitioner's Exhibit # 6) is SUSTAINED;
2. The Second and Third Specifications of professional misconduct are DISMISSED;
3. Respondent shall and hereby does receive a CENSURE AND REPRIMAND in satisfactions of the charges brought against him;
4. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York

August 27, 1996


ARSENIO G. AGOPOVICH, M.D. (CHAIR)

AARON B. STEVENS, M.D.
MARYCLAIRE B. SHERWIN

TO: Joseph Huberty, Esq.
Assistant Counsel
New York State Department of Health
Tower Building - Room 2429
Albany, New York 12237

Donovan Wayne Christie, M.D.



James Resti, Esq.
271 Montgomery Street - Suite 217
Syracuse, New York 13202

5
PETITIONER'S
EXHIBIT
5-18-96

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

-----X
IN THE MATTER : NOTICE
OF : OF
DONOVAN WAYNE CHRISTIE, M.D. : HEARING
-----X

TO: DONOVAN WAYNE CHRISTIE, M.D.
[REDACTED]
[REDACTED]

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 17th day of April, 1996 at 10:00 in the forenoon of that day at the Cultural Education Building, Empire State Plaza, Concourse Level, Meeting Room E, Albany, New York 12230 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on

PET. EX. I

your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.


Pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1996), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW SECTION 230-a
(McKinney Supp. 1996). YOU ARE URGED TO
OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

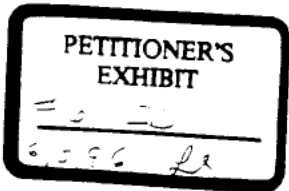
DATED: Albany, New York
March 12, 1996


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

Inquiries should be directed to:

JOSEPH HUBERTY
Assistant Counsel
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

APPENDIX I



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

-----X

IN THE MATTER : AMENDED
OF : STATEMENT OF
DONOVAN WAYNE CHRISTIE, M.D. : CHARGES

-----X

DONOVAN WAYNE CHRISTIE, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 29, 1991 by the issuance of license number 185561 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, 1995 to November 30, 1997 with a registration address of [REDACTED] w [REDACTED]

FACTUAL ALLEGATIONS

A. Upon the written consent of Respondent, on or about August 14, 1991 the New Jersey State Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners (hereinafter New Jersey Board) made and filed a Final Order finding Respondent guilty of misrepresentation of his office setting and of services actually rendered, marked overcharging, inordinately protracted reported treatment of soft tissue injuries without consultation and failure to keep contemporaneous progress notes of patient treatment. Respondent was found to have violated N.J.S.A. (New Jersey Statutes Annotated) 45:1-21(b), (d)

PET. EX. VI

and (h) and N.J.A.C. (New Jersey Administrative Code) 13:35-6.5. The New Jersey Board noted the fact that at the time of the decision Respondent was no longer a resident of, or practicing in the State of New Jersey. The New Jersey Board disciplined Respondent by issuing a Reprimand and ordering that before again practicing medicine in the State of New Jersey Respondent give written notice to the New Jersey Board and establish that he is fit and competent to practice in that state. In addition, Respondent was assessed investigative costs in the sum of Eighteen Hundred and Eighty Seven (\$1,887.00) Dollars.

B. Misrepresentations by a physician of an office setting and of services actually rendered, if committed in New York State, would constitute the fraudulent practice of medicine, a violation of N.Y. Educ. Law Sec. 6530(2) (McKinney Supp. 1996) and is defined as professional misconduct.

C. The inordinate protracted treatment of soft tissue injuries without seeking a consultation, if committed in New York State, would constitute negligence and/or incompetence on more than one occasion, a violation of N.Y. Educ. Law Sec. 6530(3) and/or (5) respectively (McKinney Supp. 1996) and is defined as professional misconduct.

D. The failure to keep contemporaneous progress notes reflecting the nature of treatment rendered the patient, if committed in New York state, would constitute a violation of N.Y.

Educ. Law Sec. 6530(32) and is defined as professional misconduct.

E. On or about October 4, 1992 Respondent made application to renew his medical registration with the New York State Education Department for the period January 1, 1993 through December 31, 1994. The renewal application required an answer to the following question: "Since you last registered, has any state other than New York instituted charges against you for professional misconduct, incompetence or negligence or revoked, suspended or accepted surrender of a professional license held by you?". Although on or about August 14, 1991 Respondent had consented in writing to the entry of the order referred to in paragraph "A" hereof, Respondent answered "NO" to this question.

F. On or about September 26, 1994 Respondent made application to renew his medical registration with the New York State Education Department for the period January 1, 1995 through November 30, 1997. The renewal application required an answer to the question: "Since you last registered, has any state other than New York instituted charges against you for professional misconduct, unprofessional conduct, incompetence or negligence or revoked, suspended or accepted surrender of a professional license held by you?". Although on or about August 14, 1991 Respondent had consented in writing to the entry of the order referred to in paragraph "A" hereof, Respondent answered "NO" to this question.

G. The denial on his application dated October 4, 1992 of having had charges of professional misconduct, unprofessional conduct, incompetence or negligence instituted by a sister state disciplinary agency since his last registration, when in fact such charges had been instituted by the New Jersey State Medical Board in 1991, constitutes the fraudulent practice of medicine and/or the filing of a false instrument in New York State in violation of N.Y. Educ. Law Sec. 6530(2) and/or (21) (McKinney Supp. 1996).

H. The denial on Respondent's application dated September 26, 1994 of having had charges of professional misconduct, unprofessional conduct, incompetence or negligence instituted by a sister state disciplinary agency since his last registration, when in fact such charges had been instituted by the New Jersey State Medical Board, constitutes the fraudulent practice of medicine and/or the filing of a false instrument in New York State in violation of N.Y. Educ. Law Sec. 6530(2) and/or (21) (McKinney Supp. 1996).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING DISCIPLINARY ACTION TAKEN
BY A DISCIPLINARY AGENCY OF A SISTER STATE

Petitioner charges Respondent with professional misconduct in that disciplinary action was taken against Respondent by the

duly authorized disciplinary agency of a sister state where the conduct resulting in such action would, if committed in New York State, constitute professional misconduct in violation of N.Y. Educ. Law Sec. 6530(9)(d) (McKinney Supp. 1996) in that Petitioner charges:

1. The facts in paragraphs A, B, C, and/or D.

SECOND SPECIFICATION

FRAUDULENT PRACTICE

Petitioner charges Respondent with professional misconduct in that Respondent practiced the profession fraudulently in violation of N.Y. Educ. Law Sec. 6530(2) (McKinney Supp. 1996) in that Petitioner charges:

2. The Facts in paragraph E, F, G and/or H.

THIRD SPECIFICATION


WILLFULLY FILING OR MAKING

A FALSE REPORT

Petitioner charges Respondent with professional misconduct in that Respondent filed and/or made a false report in violation of N.Y. Educ. Law Sec. 6530(21) (McKinney Supp. 1996) in that Petitioner charges:

3. The facts in paragraphs E, F, G and/or H.

Dated: Albany, New York
June 5, 1996


PETER D. VAN BUREN
DEPUTY COUNSEL
BUREAU OF PROFESSIONAL MEDICAL
CONDUCT