



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*

October 8, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Donald Willard Smith, M.D.  
17907 Kuykendahl Road  
Spring, Texas 77068

Effective Date: 10/15/96

**RE: In the Matter of Donald Willard Smith, M.D.**

Dear Ms. Abeloff and Dr. Smith:

Enclosed please find the Determination and Order (No. 96-239) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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.

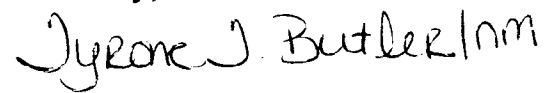
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
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,

Handwritten signature of Tyrone T. Butler in black ink, including the initials 'nm' at the end.

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 :  
DONALD WILLARD SMITH, M.D. : ORDER  
-----X

BPMC-96-239

A Notice of Referral Proceeding and Statement of Charges, both dated August 1, 1996, were served upon the Respondent, Donald Willard Smith, M.D. **RICHARD PIERSON, Jr., M.D. (Chair), ANTHONY CLEMENDOR, and EUGENIA HERBST**, 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 Dianne Abeloff, Esq., Associate Counsel. The Respondent failed to appear in person and was not represented by counsel. A hearing was held on September 10, 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

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 §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 §6530(9)(b). A copy of the Notice of Referral Proceeding and Statement of Charges is 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. Donald Willard Smith, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York

State on July 9, 1968 by the issuance of license number 104078 by the New York State Education Department. (Pet. Ex. #2).

2. On or about October 13, 1995, pursuant to an Agreed Order, the Texas State Board of Medical Examiners (hereinafter the "Texas Board") found that Respondent violated Section 3.08(4)(E) and Section 3.08(16) of the Medical Practice Act ("Act") (1992). A person violates Section 3.08(4)(E) of the Act by prescribing or administering a drug that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed. A person violates Section 3.08(16) of the Act due to an inability to practice medicine with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. (Pet. Ex. #3).

3. The Texas Board found that Respondent had been diagnosed as manic depressive in May, 1995, and that prior to the diagnosis he had exhibited manic type behavior for approximately a year and one-half. The Texas Board also found that due to Respondent's illness, he had inappropriately prescribed antibiotics, controlled substances, and other medications. The Texas Board placed Respondent on ten years probation, during which period the Respondent's practice was to be monitored. In addition, Respondent was required to participate in a program of therapy for mental illness and substance abuse and to take and pass the SPEX examination. (Pet. Ex. #3).

### 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 Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was placed on probation by the Texas Board, pursuant to an Agreed Order. Moreover, the conduct underlying the Texas action (as more specifically set out in the Texas Board's Agreed Order) would, if committed in New York State, constitute professional misconduct in violation of Education Law §6530(3) [negligence on more than one occasion], §6530(7) [practicing while impaired by alcohol, drugs, physical disability or mental disability], and §6530(8) [having a psychiatric condition which impairs the licensee's ability to practice]. Accordingly, the Hearing Committee voted to sustain the specification of professional misconduct.

### 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 revoked. 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 was disciplined by the Texas Board because of his significant impairment due to a manic depressive disorder, and due to the fact that his condition led Respondent to pursue highly inappropriate and potentially dangerous treatment regimes for his patients. In addition, Respondent is also addicted to drugs and alcohol. These circumstances are sufficient to warrant revocation. The Hearing Committee takes note of the fact that the Texas Board ultimately stayed his suspension and placed Respondent on probation for ten years, under stringent conditions. However, this Committee has an independent responsibility to consider the appropriate sanction to be imposed upon Respondent's New York medical license.

Respondent failed to appear at this proceeding, and failed to submit any evidence which would tend to mitigate the sanction to be imposed. Under the circumstances, the Hearing Committee unanimously concluded that revocation is the only appropriate sanction which will effectively safeguard the people of this state.

**ORDER**

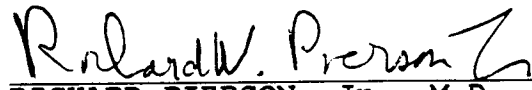
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**;
3. 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  
10/4/96 , 1996

  
RICHARD PIERSON, Jr., M.D. (CHAIR)

ANTHONY CLEMENDOR, M.D.  
EUGENIA HERBST

TO: Dianne Abeloff, Esq.  
Associate Counsel  
New York State Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001

Donald Willard Smith, M.D.  
17907 Kuykendahl Road  
Spring, Texas 77068

APPENDIX I

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

IN THE MATTER  
OF  
DONALD WILLARD SMITH, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Donald Willard Smith, M.D.  
17907 Kuykendahl Rd.  
Spring, Texas 77068

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on September 10, 1996, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, 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, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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, 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.

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

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

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

DATED: New York, New York  
August 1, 1996

*Roy Nemerson*  
E. L.

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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Daniel Guenzburger  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2615

IN THE MATTER  
OF  
DONALD WILLARD SMITH, M.D.

STATEMENT  
OF  
CHARGES

Donald Willard Smith, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 9, 1968, by the issuance of license number 104078 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about October 13, 1995, pursuant to an Agreed Order, the Texas State Board of Medical Examiners ("Board") found that Respondent violated Section 3.08 (4) (E) and Section 3.08 (16) of the Medical Practice Act ("Act") (1992). A person violates Section 3.08 (4) (E) of the Act by prescribing or administering a drug that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed. A person violates Section 3.08 (16) of the Act due to an inability to practice medicine with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

The Board found that Respondent had been diagnosed as manic depressive in May 1995, and that prior to the diagnosis he had exhibited manic type behavior for approximately a year and one-half. The Board also found that due to Respondent's illness the Respondent inappropriately prescribed antibiotics, controlled substances, and other medications. The Board placed

Respondent on ten years probation, during which period the Respondent's practice was to be monitored, Respondent was required to participate in a program of therapy for mental illness and substance abuse and to take and pass the SPEX examination.

### **SPECIFICATION OF CHARGES**

#### **SPECIFICATION** **HAVING BEEN FOUND GUILTY OF** **PROFESSIONAL MISCONDUCT**

1. Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1996) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely: N.Y. Educ. Law § 6530 (3) (McKinney Supp. 1996) ("Practicing negligence on more than one occasion."); N.Y. Educ. Law §6530 (7 ) (McKinney Supp. 1996) ("Practicing the profession while impaired by alcohol, drugs, physical disability or mental disability."); N.Y. Educ. Law § 6530(8) (McKinney Supp. 1996) ("Having a psychiatric condition which impairs the licensee's ability to practice.")



DATED: August 1, 1996  
New York, New York

*Roy Nemerson*

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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct