



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., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

PUBLIC

January 28, 2004

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street – 4<sup>th</sup> Floor  
Troy, New York 12180

Rati Kanta Dutta, M.B.B.S.  
304 W. Michigan Avenue  
Urbana, IL 61801

**RE: In the Matter of Rati Kanta Dutta, M.B.B.S.**

Dear Parties:

Enclosed please find the Determination and Order (No. 04-11) 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 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  
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.

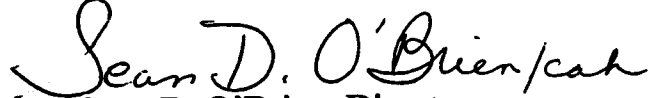
The notice of review served on the Administrative Review Board should be forwarded to:

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,

  
Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah  
Enclosure

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

IN THE MATTER  
OF  
RATI KANTA DUTTA, M.B.B.S.

DETERMINATION

AND

ORDER

**COPY**

BPMC #04-11

A hearing was held on January 21, 2004, 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 December 3, 2003, were served upon the Respondent, **Rati Kanta Dutta, M.B.B.S.** Pursuant to Section 230(10)(e) of the Public Health Law, **Peter B. Kane, M.D.**, Chairperson, **Alexander M. Yvars, M.D., F.A.C.S.**, and **James P. Milstein, J.D.**, 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 **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing either in person or by counsel.

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 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)(b) and (d). 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: None

#### **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. Rati Kanta Dutta, M.B.B.S., the Respondent, was authorized to practice medicine in New York State on January 24, 1975, by the issuance of license number 122829 by the New York State Education Department (Petitioner's Ex. 4).

2. On January 8, 2003, the Illinois Department of Professional Regulation, by a Consent Order ("Illinois Order"), indefinitely suspended, for a minimum of five years, the Respondent's controlled substance license, placed his license to practice medicine on a

minimum of five years probation, and required the Respondent to complete 50 hours of continuing medical education in the field of prescribing and dispensing controlled substances, based on his failure to prescribe and dispense controlled substances properly for five patients (Petitioner's Ex. 5).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(5) - "Practicing the profession with incompetence on more than one occasion;" and
- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(b) 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..."

VOTE: Sustained (3-0)

#### **SECOND SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another

state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

### HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing. The Petitioner introduced into evidence Petitioner's Ex. 2, 3, 6 and 7, documents that proved that the Respondent was served with the Notice of Referral Proceeding and the Statement of Charges, both personally and by certified mail. The Administrative Law Judge ruled that the requirements of law for service of process (Public Health Law Section 230[10][d]) had been met and that the hearing could proceed despite the absence of the Respondent.

The Illinois Order and associated documents in Petitioner's Ex. 5 disclose that the Respondent prescribed controlled substances for five persons for non-therapeutic reasons. The Respondent wrote controlled substance prescriptions for one of these persons despite the Respondent's belief that the person had an addictive personality and could be a drug addict. Another person was given controlled substance prescriptions even though the Respondent believed that the drugs were to be consumed by someone else. Another of these persons was given controlled substance prescriptions despite the Respondent's knowledge that the person had an alcohol problem.

To state the obvious, the conduct described in the documentary evidence from the Illinois proceeding is extraordinarily irresponsible. Physicians are supposed to facilitate the recovery of people with drug problems, not facilitate their access to controlled substances. Since the Respondent did not appear at the hearing, the hearing record contains no evidence of mitigating circumstances, rehabilitation or remorse. The Petitioner recommended that the Respondent's license to practice medicine be revoked. This recommendation will be adopted.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in New York State is revoked.
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: Cazenovia, New York**

**11/27, 2004**

  
**Peter B. Kane, M.D.**  
**Chairperson**

**Alexander M. Yvars, M.D., F.A.C.S.**  
**James P. Milstein, J.D.**



# APPENDIX 1

**ORIGINAL**

**EXHIBIT**

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

**IN THE MATTER**

**OF**

**RATI KANTA DUTTA, M.B.B.S.  
CO-03-03-1271-A**

**NOTICE OF**

**REFERRAL**

**PROCEEDING**

**TO:    RATI KANTA DUTTA, M.B.B.S.  
         304 W. Michigan Avenue  
         Urbana, IL 61801**

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 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 21<sup>st</sup> day of January 2004, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of

Adjudication") as well as the Department of Health attorney indicated below, on or before January 12, 2004.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall 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 of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before January 12, 2004, 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

*December 3*, 2003

*Peter D. Van Buren*

**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

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IN THE MATTER  
OF  
RATI KANTA DUTTA, M.B.B.S.  
CO-03-03-1271-A

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STATEMENT  
OF  
CHARGES

RATI KANTA DUTTA, M.B.B.S., the Respondent, was authorized to practice medicine in New York state on January 24, 1975, by the issuance of license number 122829 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about January 8, 2003, the State of Illinois, Department of Professional Regulation (hereinafter "Illinois Board") by a Consent Order (hereinafter "Illinois Order"), indefinitely suspended, for a minimum of five (5) years, Respondent's Controlled Substance license, placed his license to practice medicine on a minimum of five (5) years probation, and required him to complete fifty (50) hours CME in the field of prescribing and dispensing controlled substances, based on his failure to properly prescribe and dispense controlled substances for five (5) patients.

B. The conduct resulting in the Illinois Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
  2. New York Education Law §6530(5) (incompetence on more than one occasion);
- and/or
3. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) 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, in that Petitioner charges:

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

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *December 3*, 2003  
Albany, New York

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