



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

July 2, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

John H. Wittig, M.D.
10401 Quito Lane
Los Angeles, California 90077

John H. Wittig, M.D.
18411 Clark Street, Atp. 304
Tarzana, California 91356

John H. Wittig, M.D.
4327 Rous Street
San Diego, California 92122

John H. Wittig, M.D.
5525 Etiwanda, #202
Tarzana, California 91356

RE: In the Matter of John H. Wittig, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-146) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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.

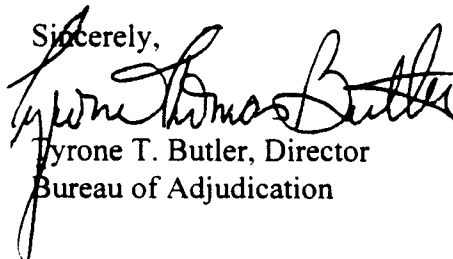
The notice of review served on the Administrative Review Board should be forwarded to:

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 MATTER
OF
JOHN H. WITTIG, M.D.

COPY

DETERMINATION

AND

ORDER

ORDER# 99-146

A Notice of Referral Proceedings and Statement of Charges, both dated May 20, 1999 were effectively served upon the Respondent, **JOHN H. WITTIG, M.D.**,

ARSENIO G. AGOPOVICH, M.D., Chairperson, **JOSEPH E. GEARY, M.D.** and **NANCY J. MORRISON**, 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 June 24, 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.**, of Counsel. After due diligent efforts, the Petitioner was unable to personally serve the Notice of Hearing and Statement of Charges upon the Respondent, but a copy of the Notice of Hearing and Statement of Charges was served by registered mail. The Respondent did not appear for the hearing.

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 of 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)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

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 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **JOHH H. WITTIG, M.D.**, the Respondent, was authorized to practice medicine in New York state on November 19, 1975, by the issuance of license number 125915 by the New York State Education Department (Pet's. Ex. 4).

2. On September 7, 1998, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, (hereinafter "California Board"), entered a Default Decision and Order, (hereinafter "California Order"), that revoked the Respondent's certificate to practice medicine and ordered him to reimburse the California Board in the amount of \$26,459.20 based upon findings of mental impairment, insurance fraud, unlawful practice, and dishonest and corrupt acts (Pet's. Ex. 5).

HEARING COMMITTEE CONCLUSION

The Hearing Committee concludes that the conduct which resulted in the California Board's disciplinary action against the Respondent would, if committed in New York State, constitute professional misconduct under the law of New York State:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(7) (practicing the profession while impaired by mental disability);
3. New York Education Law §6530(12) (practicing the profession while the license is suspended or inactive)
4. New York Education Law §6530(20) (moral unfitness).

FIRST SPECIFICATION

The 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 which the

finding was based would; if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: Sustain (3-0)

SECOND SPECIFICAITON

The Respondent violated New York State Education Law §6530(9) (d) by having had disciplinary action taken against him 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)

DETERMINATION OF THE HEARING COMMITTEE

Based on the findings by the California Board that the Respondent was mentally impaired and that he was guilty of insurance fraud, the unlawful practice of medicine, and dishonest and corrupt acts, the Hearing Committee determines that the Respondents license to practice medicine in the State of New York should be REVOKED.

ORDER


IT IS HEREBY ORDER THAT:

1. The Respondent's license to practice medicine in the State of New York is REVOKED.

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.

DATE: Troy, New York

June 29, 1999



ARSENIO G. ASOPOVICH, M.D.
CHAIRPERSON

JOSEPH E. GEARY, M.D.
NANCY J. MORRISON

Appendix 1



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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
JOHN H. WITTIG, M.D. : PROCEEDING

-----X

TO: JOHN H. WITTIG, M.D.
5525 Etiwanda, #202
Tarzana, CA 91356

JOHN H. WITTIG, M.D.
4327 Rous Street
San Diego, CA 92122

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 24th day of June, 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 June 14, 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 June 14, 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
May 20, 1999

Peter D. Van Buren

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

-----X

IN THE MATTER : STATEMENT
OF : OF
JOHN H. WITTIG, M.D. : CHARGES

-----X

JOHN H. WITTIG, M.D., the Respondent, was authorized to practice medicine in New York state on November 19, 1975, by the issuance of license number 125915 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 7, 1998, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, (hereinafter "California Board"), entered a Default Decision and Order, (hereinafter "California Order"), that revoked the Respondent's certificate to practice medicine and ordered him to reimburse the California Board in the amount of \$26,459.20 based upon findings of mental impairment, insurance fraud, unlawful practice, and dishonest and corrupt acts.

B. The conduct resulting in the California Board's 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(7) (practicing the profession while impaired by mental disability);
3. New York Education Law §6530(12) (practicing the profession while the license is suspended or inactive); and/or
4. New York Education Law §6530(20) (moral unfitness).

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 the Petitioner charges:


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

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having had disciplinary action taken against him 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 the Petitioner charges:

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

DATED: *May 20*, 1999
Albany, New York


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