

**DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH**

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

June 5, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Henry L. Kirsch, M.D.
6219 W. 77th Street
Los Angeles, California 90045

Jude Brearton Mulvey, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Henry Louis Kirsch, M.D.

Dear Dr. Kirsch and Ms. Mulvey:

Enclosed please find the Determination and Order (No. 97-127) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Handwritten signature of Tyrone T. Butler in black ink.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
OF
HENRY LOUIS KIRSCH, M.D.

DETERMINATION
AND
ORDER

BPMC-97-127

A Notice of Referral Proceedings and Statement of Charges, both dated April 14, 1997, were served upon the Respondent, **HENRY LOUIS KIRSCH, M.D.**

CHARLOTTE S. BUCHANAN, ESQ., Chairperson, **ANDREW J. MERRITT, M.D.**

and **RAVENDER MAMTANI, M.D.** 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 May 17, 1997, 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 **JUDE BREARTON MULVEY, ESQ.**, of Counsel. The Respondent failed to appear.

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). 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. Henry Louis Kirsch, M.D., the Respondent, was authorized to practice medicine in New York State on October 5, 1979, by the issuance of license number ~~13996~~^{13996G} by the New York State Education Department. He is not currently registered with the New York State Education Department to practice medicine (Pet's. Ex. 1 and 4).

2. The California Board of Medical Quality Assurance, by Decision and Order dated September 13, 1991, which adopted the Proposed Decision of the Administrative Law Judge dated January 4, 1991, determined that the Respondent, during the approximate period of July 1982 through March 1989 engaged in unprofessional conduct by repeated acts of negligence and gross negligence with regard to his treatment of seven patients in violation of California Business and Professions Code §§ 725, 2234(b) and (c), and 2242 (Pet's. Ex. 3).

3. More specifically, the California Board found that the following constituted negligence and/or gross negligence by the Respondent:

- a. The Respondent repeatedly prescribed Diluadid to Patient J.V. in excessive amounts, over a three and half year period;
- b. The Respondent prescribed Diluadid and Seldane to Patient R.L., a substance abuser, in excessive amounts on repeated occasions;
- c. The Respondent prescribed Empirin or APC #4 and Tylenol #4, to Patient D.G. on repeated occasions, despite Respondent's knowledge that D.G. was dependent upon codeine;
- d. The Respondent prescribed Dilaudid and Valium in excessive amounts to Patient M.S. Respondent failed to recognize that Patient M.S. acquired an addiction to controlled substances, especially Dilaudid, while under Respondent's care;
- e. The Respondent repeatedly prescribed excessive amounts of Demerol, Vistoril, Percodan and Tylenol with Codeine to Patient C.P.;

- f. The Respondent prescribed controlled substances to Patient M.F., who was drug dependent, without a prior good faith physical examination, eight times during the approximate period of December, 1985 through June, 1987;
- g. Respondent prescribed controlled substances to Patient C.M. without a prior good faith physical examination, on at least eight occasions during the approximate period of May 1984 through January 1988 (Pet's. Ex. 3).

4. The California Board revoked the Respondent's license to practice medicine, the revocation was stayed and the Respondent was placed on a five year term of probation under conditions which included, inter alia, the requirements that the Respondent successfully complete an oral or written examination in internal medicine and gastroenterology; that the Respondent undertake no less than forty hours of continuing education per year in pain management, drug abuse and ethics for a period of two years; and that Respondent not prescribe, administer, dispense, order or possess any drugs except under specified conditions (Pet's. Ex. 3).

5. By Order, dated November 1, 1996, and effective October 13, 1996, the California Board restored the Respondent's license to clear status upon his successful completion of probation (Pet's. Ex. 3).

CONCLUSION

The conduct underlying the California Board's finding that Respondent was guilty of unprofessional conduct would, if committed in New York State, constitute professional misconduct under New York Education Law §6530(3) [negligence on more than one occasion] and/or §6530(4) [gross negligence on a particular occasion] (McKinney Supp. 1997).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

The Respondent is charged with professional misconduct under New York Education Law §6530(9)(b) (McKinney Supp. 1997) by reason of 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)

DETERMINATION OF THE HEARING COMMITTEE

The record indicates that the violations, which are the subject of this case, occurred in California during the period July, 1982 through March, 1989

The California Board put the Respondent on probation for five years (1991-1996) and he has successfully completed all the terms of probation. His license to practice medicine in the State of California was fully restored to clear status by Order dated, November 1, 1996, and effective October 13, 1996.

Based on the foregoing, the Hearing Committee determines unanimously, (3-0), that no

further action should be taken against the Respondent with respect to those violations which were the subject of the California Board's action.

ORDER

IT IS HEREBY ORDERED THAT:

1. No further action should be taken against the Respondent with respect to those violations which were the subject of the California Board's action.
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: Albany, New York
May 31, 1997

Charlotte S. Buchanan
CHARLOTTE S. BUCHANAN, ESQ., Chairperson

ANDREW J. MERRITT, M.D.
RAVENDER MAMTANI, M.D.

TO: Henry L. Kirsch, M.D.
6219 W. 77th Street
Los Angeles, CA 90045

Jude Brearton Mulvey, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2503
Albany, New York 12237

APPENDIX I

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

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IN THE MATTER : STATEMENT
OF : OF
HENRY LOUIS KIRSCH, M.D. : CHARGES

-----X

HENRY LOUIS KIRSCH, M.D., the Respondent, was authorized to practice medicine in New York State on October 5, 1979, by the issuance of license number 13996 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. The California Board of Medical Quality Assurance, by Decision and Order dated September 13, 1991 which adopted the Proposed Decision of the Administrative Law Judge dated January 4, 1991, determined that Respondent, during the approximate period of July 1982 through March 1989 engaged in unprofessional conduct by repeated acts of negligence and gross negligence with regard to his treatment of seven patients in violation of California Business and Professions Code §§ 725, 2234(b) and (c), and 2242.

2. More specifically, the California Board found that the following constituted negligence and/or gross negligence by Respondent:

EXHIBIT 1

- a. Respondent repeatedly prescribed Dilaudid to Patient J.V. in excessive amounts, over a three and half year period;
- b. Respondent prescribed Dilaudid and Seldane to Patient R.L., a substance abuser, in excessive amounts on repeated occasions;
- c. Respondent prescribed Empirin or APC #4 and Tylenol #4, to Patient D.G. on repeated occasions, despite Respondent's knowledge that D.G. was dependent upon codeine;
- d. Respondent prescribed Dilaudid and Valium in excessive amounts to Patient M.S. Respondent failed to recognize that Patient M.S. acquired an addiction to controlled substances, especially Dilaudid, while under Respondent's care;
- e. Respondent repeatedly prescribed excessive amounts of Demerol, Vistoril, Percodan and Tylenol with Codeine to Patient C.P.;
- f. Respondent prescribed controlled substances to Patient M.F., who was drug dependent, without a prior good faith physical examination eight times during the approximate period of December, 1985 through June, 1987;
- g. Respondent prescribed controlled substances to Patient C.M. without a prior good faith physical examination on at least eight occasions during the approximate period of May 1984 through January 1988.

3. The California Board revoked Respondent's license to practice medicine, the revocation was stayed and Respondent was placed on a five year term of probation under conditions which included, inter alia, the requirements that Respondent successfully complete on oral or written examination in internal medicine and gastroenterology, that Respondent undertake no less than forty hours of continuing education per year in pain management, drug abuse and ethics for a period of two years and that Respondent not prescribe, administer, dispense, order or possess any drugs except under specified conditions. By Order

dated November 1, 1996 and effective October 13, 1996, the California Board restored Respondent's license to clear status upon his successful completion of probation.

4. The conduct underlying the California Board's finding that Respondent was guilty of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(3) [negligence on more than one occasion] and/or §6530(4) [gross negligence on a particular occasion] (McKinney Supp. 1997).

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1997) by reason of 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 1 through 4.

DATED: *April 14*, 1997

Albany, New York

Peter D. Van Buren

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

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

-----x
IN THE MATTER : NOTICE OF
OF : REFERRAL
HENRY LOUIS KIRSCH, M.D. : PROCEEDING
-----x

TO: HENRY LOUIS KIRSCH, M.D.
6219 W. 77TH STREET
LOS ANGELES CALIFORNIA 90045

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 14th day of May, 1997 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 May 1, 1997.

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 or 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 indicted 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 May 5, 1997 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
April 14, 1997

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

Inquiries should be addressed to:

Jude Brearton Mulvey
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2503
Empire State Plaza
Albany, New York 12237
(518) 473-4282