



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

June 24, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frederick A. Coville, M.D.
5137 Haven Ave.
Ocean City, New Jersey 08226

Robert J. Conroy, Esq.
Kem, Augustine, Conroy & Schoppmann
1120 Route 22 East
Bridgewater, New Jersey 08807

Cindy M. Fascia, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Effective Date: 7/1/94

RE: In the Matter of Frederick A. Coville, M.D.

Dear Dr. Coville, Mr. Conroy and Ms. Fascia:

Enclosed please find the Determination and Order (No. 94-91) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he 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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER OF
FREDERICK A. COVILLE, M.D.**

RESPONDENT

**DETERMINATION
AND ORDER
OF THE
HEARING COMMITTEE
NO. BPMC-94-91**

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated February 15, 1994, which were served upon **FREDERICK A. COVILLE, M.D.** (hereinafter referred to as "Respondent"). **STANLEY D. LESLIE, M.D., Chairperson, DONALD F. BRAUTIGAM, M.D., and TRENA DeFRANCO**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on April 20, 1994 at the offices of the New York State Department of Health, Corning Tower, Albany , New York. The State Board For Professional Medical Conduct appeared by **CINDY M. FASCIA, ESQ.**, Associate Counsel. Respondent appeared in person and by Kern, Augustine, Conroy & Schoppmann, **ROBERT J. CONROY, ESQ.**, of counsel. Evidence was received and witnesses sworn and heard. A transcript of these proceedings was 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). This statute provides for an expedited hearing where 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 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 Section 6530 (9)(d) by reason of his having had his license to practice revoked, suspended or having other disciplinary action taken, after a disciplinary action was instituted by the duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State. A Copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

SIGNIFICANT LEGAL ISSUES

Respondent argued that 6530 (9)(d), the provision under which the charges in this proceeding stem, is inapplicable to him. Respondent based his argument on the wording of the statute. The provision cited states, in relevant part that the definition of medical misconduct shall include:

[...] having other disciplinary action taken [against a license to practice medicine]... after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the *conduct* (emphasis provided) resulting in the ... other disciplinary action involving the license... would, if committed in New York State, constitute professional misconduct under the laws of New York state.

According to Respondent, since he signed a Consent Order prior to trial, no conduct was ever proven. Hence, there is no way to determine whether the conduct would constitute a violation

of professional standards in New York state. However, read in the context of the other provisions of 6530 (9), it is clear to the Administrative Law Judge that the legislature intended section 6530 (9)(d) to address precisely the situation presented by this case: A practitioner is charged with very serious misconduct in another state, and settles the matter without making any admissions. The statutory language is obviously intended to convey the idea that the alleged conduct from which the action by the other state arises must constitute medical misconduct in New York state. Thus for the State to prevail in this proceeding, it need not show actual conduct. Rather, the State need only show that a disciplinary action was commenced by another state, that Respondent was subjected to some disciplinary action, and that the allegations which gave rise to the disciplinary proceeding would constitute professional misconduct in New York state. This interpretation was announced both to the parties and the Committee prior to deliberation.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one through four of the Statement of Charges (Appendix I) as its findings of fact and incorporates them herein.

CONCLUSIONS

The State has satisfied its burden of proof with regard to the factual allegations herein. Indeed, Respondent admits he entered into an Administrative Action Consent Order in resolution of a pending disciplinary proceeding before the New Jersey Board of Medical Examiners. The Administrative Consent Order constitutes a disciplinary action. Furthermore, the Consent Order arose after Respondent was charged with acts constituting fraudulent practice, moral unfitness, gross negligence, gross incompetence as well as either negligence or incompetence or both, on more than one occasion.

Having found that the basic requirements for a finding of misconduct have been met by the State, the Committee must now consider what if any penalty should be attached to the activity herein. The Committee is mindful that none of the allegations were ever litigated. Nevertheless, Respondent voluntarily agreed to an actual suspension of his license for an entire year, as well as

what can only be described as drastic limitations on his practice should he be found able to resume after the suspension is over. The Committee cannot believe that a physician would agree to such serious consequences absent a strong case on the part of the state of New Jersey. Given the appalling nature of the allegations which include both medical lapses as well as moral depravity, and based upon the severe penalty agreed to by Respondent, the Committee can find no basis for leniency.

Moreover, Respondent showed not the slightest hint of remorse or rehabilitation. He denied all charges and presented himself as fully capable and qualified to undertake unlimited practice in this state. The Committee finds this very serious and can see no alternative but revocation.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Factual allegations in the Statement of Charges are SUSTAINED.

Furthermore, it is hereby ordered that;


2. The Specification of Misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is SUSTAINED;

Furthermore, it is hereby ordered that;

3. Respondent 's license to practice medicine in the state of New York is REVOKED

Dated: Fayetteville, New York:

14 June, 1994


STANLEY D. LESLIE, M.D., chairperson

DONALD F. BRAUTIGAM, M.D.
TRENA DeFRANCO

TO:

CINDY M. FASCIA, ESQ.
Associate Counsel
N.Y.S. Department of Health
Corning Tower,
Albany, New York 12237

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1120 Route 22 East
Bridgewater, NJ 08807

FREDERICK A. COVILLE, M.D.
5137 Haven Ave.
Ocean City N. J. 08226

APPENDIX I

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

-----X
IN THE MATTER : STATEMENT
OF : OF
FREDERICK A. COVILLE, M.D. : CHARGES
-----X

FREDERICK A. COVILLE, M.D., the Respondent, was authorized to practice medicine in New York State on October 17, 1983 by the issuance of license number 156039 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, 1993 through December 31, 1994 from 5137 Haven Avenue, Ocean City, New Jersey 08226.

FACTUAL ALLEGATIONS

1. On or about July 7, 1992, the New Jersey State Board of Medical Examiners filed an Administrative Action Complaint dated July 2, 1992 against Respondent. The Board, on or about July 7, 1992, also issued an Order to Show Cause seeking a temporary suspension, restraint or limitation of Respondent's New Jersey medical license pending final disposition of all charges in the Administrative Complaint.

2. Respondent, on or about July 8, 1992, entered into a Consent Order with the New Jersey Board of Medical Examiners. Under the terms of said Order, Respondent agreed that effective July 10, 1992 he would not examine or treat any patient and would close his office for the practice of medicine pending a summary hearing scheduled for August 12, 1992, at which time the New Jersey Board was scheduled to hear and consider on a summary basis the application for the imposition of temporary restraints on Respondent's medical practice pending the outcome of the plenary hearing.

3. On or about August 12, 1992, Respondent appeared before the New Jersey Board of Medical Examiners, and agreed to the entry of an Interim Order of Limitations which placed conditions and limitations on Respondent's practice of medicine. Said Interim Order of Limitations was filed on or about September 11, 1992.

4. Pursuant to said Interim Order, on or about September 14, 1992, Respondent's case was transferred to the Office of Administrative Law, given a docket number, and assigned to an Administrative Law Judge. A telephone pre-hearing conference was held on December 3, 1992, and the hearing was scheduled for February 1993. By telephone conference of January 25, 1993, the hearing was adjourned pending efforts to negotiate a settlement.

5. On or about May 18, 1993, Respondent entered into a Consent Order in resolution of the Administrative Action against

him pending before the New Jersey Board. Under the terms of said Consent Order, Respondent's license to practice medicine in New Jersey is suspended for a period of four years. The first three years of the suspension are stayed provided Respondent adheres to restrictions on his medical practice. Respondent is ordered not to practice cosmetic or reconstructive surgery. Respondent may only practice medicine "pursuant to a bona fide employment relationship" approved in writing in advance by the New Jersey Board. Such employment relationship is authorized only where another physician agrees in writing to supervise Respondent, to ensure that Respondent practices no cosmetic or reconstructive surgery, and to submit to the Board written reports of Respondent's continued employment and compliance with the terms of the Consent Order no less than twice per year. Respondent is required to have a chaperon present for all physical examinations or medical treatments of female patients. Said chaperon must be a certified medical professional approved by the Board. The chaperon is required to sign a statement indicating her awareness of the Board's Order, acknowledging that her responsibility is to the Board, indicating that she agrees to submit written reports to the Board no less often than twice per year attesting that she was always present when Respondent met with, examined or treated female patients, and indicating that she understands that she is to report to the Board immediately any failure of Respondent to cooperate.

Respondent is also required to attend a series of accredited continuing medical education courses in the areas of infectious diseases and post-surgical complications, each of which courses must be approved in advance by the Board and proof of the successful completion of which shall be submitted to the Board. Respondent is required to reimburse the Board for all reasonable investigative and administrative costs. During the fourth year of his suspension, Respondent is required to undertake, and will be allowed to practice medicine only pursuant to and as required by a post-graduate training course or fellowship program in cosmetic and/or reconstructive surgery approved by the Board. Any failure by Respondent to comply with any term of the Consent Order will result in the activation of the suspension of his license. In the event that Respondent wishes to resume the practice of medicine and surgery in New Jersey following the period of suspension he will be required to submit to the Board any and all records of his performance in the residency or fellowship program, to submit to psychological and psychiatric evaluations performed by a psychologist and psychiatrist approved by the Board, to submit to the Board written reports of the aforesaid evaluations, and to appear before a Committee of the Board.

6. The conduct set forth in the New Jersey Board's Complaint, which was the conduct resulting in the suspension of Respondent's license, would, if committed in New York State,

constitute professional misconduct under the laws of New York State, specifically N.Y. Educ. Law §6530(2) [practicing the profession fraudulently or beyond its authorized scope]; and/or N.Y. Educ. Law §6530(4) [practicing the profession with gross negligence on a particular occasion]; and/or N.Y. Educ. Law §6530(6) [practicing the profession with gross incompetence on a particular occasion]; and/or N.Y. Educ. Law §6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine]; and/or N.Y. Educ. Law §6530(3) [practicing the profession with negligence on more than one occasion]; and/or N.Y. Educ. Law §6530(5) [practicing the profession with incompetence on more than one occasion].

FIRST SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994) by reason of him having had his license to practice medicine revoked, suspended or having other disciplinary action taken, after a disciplinary action was instituted by the duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York state, in that Petitioner charges: