



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

Karen Schimke
Executive Deputy Commissioner

October 31, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

RECEIVED

NOV 01 1995

Catherine Cholakis, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Joel Henry Mayer, M.D.
6714 Gateshead Lane
Indianapolis, Indiana 46220

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of Joel Henry Mayer, M.D.

Effective Date: 11/07/95

Dear Ms. Cholakis and Dr. Mayer:

Enclosed please find the Determination and Order (No. 95-250) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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.

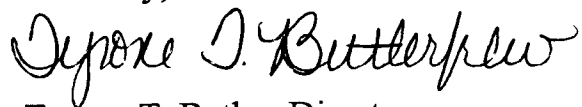
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

IN THE MATTER
-OF-
JOEL HENRY MAYER, M.D.

Respondent

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE
BPMC ORDER
NO. 95-250

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated August 15, 1995 which were served upon **JOEL HENRY MAYER, M.D.**, (hereinafter referred to as "Respondent"). **JOHN H. MORTON, M.D., Chairperson, JOSEPH E. GEARY, M.D.,** and **MICHAEL WALKER**, 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 September 20, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by **JERRY JASINSKI, ESQ.**, Acting General Counsel, by **CATHERINE CHOLAKIS, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct. Respondent appeared *pro se*. Evidence was received. Testimony was heard under oath. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10) (a through l) and Section 230(10)(p). Hence, Respondent is charged with misconduct under the ordinary provisions as well as misconduct under expedited provisions [230 (10)(p)].

In the instant case, Respondent is charged with professional misconduct pursuant to four sections of the Education Law:

1. Section 6530(9)(d) [Having his or her license to practice medicine revoked, suspended or *having other disciplinary action taken, or having his or her application for a license refused*, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted *by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state*] (relevant portions *highlighted*);
2. Section 6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine];
3. Section 6530(21) [willfully filing a false report]
4. Section 6530(2) [practicing medicine fraudulently]

The charges arise from denial of a medical license on January 25, 1991 and again on March 16, 1995 by the Kentucky State Board of Medical Licensure. The charges also refer to discipline On December 2, 1994, by the State of Michigan, Department of Commerce, Board of Medicine. Finally, the charges are based upon applications to the New York State Education Department for medical licensure dated November 16, 1992 and October 20, 1994. The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

SIGNIFICANT LEGAL RULINGS
BY THE
ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge issued instructions to the Committee with regard to the definitions of medical misconduct as alleged in this proceeding. The Committee was instructed that to sustain its burden

of proof with regard to the First Specification, which is charged under Section 230(10)(p), Petitioner must show Respondent was disciplined by the state of Michigan, and that at least one application for licensure was denied by the authorities in Kentucky.

The Committee was also instructed that to establish the charge of moral unfitness in the Second and Third Specifications, Petitioner must show Respondent committed acts which "evidence moral unfitness." The Committee was instructed that the standard for moral unfitness in the practice of medicine is twofold: First, there may be a finding that the accused has violated the public trust which is bestowed upon one by virtue of his licensure as a physician. Under the second criteria it was explained that moral unfitness could be seen as a violation of the moral standards of the medical community which the Committee, as delegated members of that community, represent. Either or both criteria could be found by the Committee and would constitute the basis for a finding of acts which evidence moral unfitness.

The Committee was further instructed that the Fourth and Fifth Specifications which allege filing a false report would be defined according to the ordinary definitions of the words in the charges.

Finally, with regard to the Sixth and Seventh Specifications, the fraudulent practice of medicine was explained to the Committee as the intentional misrepresentation or concealment of a known fact, made in connection with the practice of medicine. It was pointed out that knowledge and intent may properly be inferred from facts found by the Committee, however, the Committee must specifically state the inferences it is drawing regarding knowledge and intent.

FINDINGS OF FACT

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

**CONCLUSIONS
WITH REGARD TO
FACTUAL ALLEGATIONS**

Petitioner herein, has proven by a preponderance of the evidence that the State of Kentucky denied Respondent a license to practice medicine based upon their finding that Respondent suffered from mental and emotional difficulties. Petitioner also proved that subsequent to the Kentucky action, the state of Michigan disciplined Respondent based upon similar findings. Petitioner established that Respondent again applied to Kentucky for a license to practice medicine. This application was also denied based upon mental and emotional disability. Finally, Petitioner has also shown that Respondent submitted applications to New York which contained false statements: When asked whether since his last registration any state or facility had disciplined Respondent, he answered in the negative despite the actions of Kentucky and Michigan. Therefore, the State has met its burden with regard to the factual allegations.

**CONCLUSIONS
WITH REGARD TO
THE FIRST SPECIFICATION**

The Committee now turns its attention to the specifications. The First Specification, which alleges discipline and license refusal by other jurisdictions, was established by a preponderance of the evidence. Petitioner has proven, and indeed, Respondent did not deny, he was refused a license by Kentucky twice and was disciplined by the state of Michigan. These facts support and establish the assertion that Respondent violated section 6530(9)(d) of the Education Law by experiencing a denial of a license application and discipline in other jurisdictions.

Therefore:
The First Specification is **SUSTAINED**

**CONCLUSIONS
WITH REGARD TO
THE SECOND AND THIRD SPECIFICATIONS**

The Second and Third specifications allege moral unfitness to practice medicine. The Second Specification arises from a false entry on an application for a license to practice medicine in New York state, filed in November 1992. The Third Specification arises from a similar application filed in October 1994. On both applications, Respondent did not disclose the prior discipline and refusals of applications which occurred in Michigan and Kentucky. Respondent offered testimony to the effect that he answered the questions truthfully as he understood them. The Committee finds this testimony to be unconvincing. Upon questioning by the panel, Respondent equivocated regarding his reasons for making the factually incorrect answers. The dates of the applications and the clarity of the questions posed by the applications make it obvious to this body that Respondent knew the correct answers and chose to give false responses. Hence, based upon Respondent's testimony, and the nature of the questions in issue, the Committee finds that Respondent knew the truthful answers to the questions and chose to answer them untruthfully. Therefore, the Committee finds Respondent intended to deceive the New York authorities.

Having found that Respondent intentionally attempted to deceive the state of New York in the preparation of his applications for licensure, the Committee concludes Respondent committed acts evidencing moral unfitness. The Committee bases this conclusion on the following reasoning: The people of this state, who ultimately issue a license to physicians depend upon such professionals to file official documents or reports, accurately and truthfully. Therefore, it is a violation of this expectation, and hence a violation of the public trust, to knowingly file other than truthful documents. Furthermore, the Committee finds it is a violation of the standards of the medical community to knowingly attempt to deceive the state. Hence, based upon both of the definitions of acts evidencing moral unfitness set forth above, the Committee finds Respondent, in his attempt to deceive the state, demonstrated acts evidencing moral unfitness to practice medicine.

Therefore;

The Second Specification is **SUSTAINED**.

The Third Specification is **SUSTAINED**.

**CONCLUSIONS
WITH REGARD TO
THE FOURTH AND FIFTH SPECIFICATIONS**

The Fourth and Fifth Specifications arise from the same applications for licensure in New York state. In the Fourth and Fifth Specifications, Petitioner charges that the failure by Respondent to disclose the events in Kentucky and Michigan constitutes willfully filing a false report under Section 6530 (21) of the Education Law. As set forth above, the Committee finds Respondent failed in both instances to disclose the earlier denials and discipline despite unequivocal questions which inquired of same. Again, as stated above, the Committee finds Respondent submitted the applications with the intent to deceive. This, by any reasonable definition of the terms "false" and "report" constitutes two acts of intentionally filing a false report.

Therefore;

The Fourth Specification is **SUSTAINED**.

The Fifth Specification is **SUSTAINED**.

**CONCLUSIONS
WITH REGARD TO
THE SIXTH AND SEVENTH SPECIFICATIONS**

The Sixth and Seventh Specifications refer to the same applications. Petitioner charges Respondent with fraudulent practice under the facts sustained. Clearly, Respondent intended to deceive the state in the two applications. The intentional attempt to deceive fulfills the definition of fraudulent practice as set forth above.

Therefore;

The Sixth Specification is **SUSTAINED**.

The Seventh Specification is **SUSTAINED**.

**CONCLUSIONS
WITH REGARD TO
PENALTY**

Respondent appeared before this Committee without the benefit of counsel. He stated that he knew he was entitled to engage counsel but chose to proceed in his own behalf. Respondent presented a rambling

defense which asserted that a vision problem led to depression and mental difficulties. Notwithstanding the rambling nature of his presentation, Respondent demonstrated a clear understanding of the charges. Respondent demonstrated absolutely no difficulty in making himself understood. He was well prepared and had brought dozens of exhibits, including charts, letters and other documents. The majority of these documents were inadmissible under the doctrine of Collateral Estoppel, however, the point is that Respondent, through his thorough preparation, demonstrated he was not at any disability in his effort to answer the charges herein. Nor did he reflect any disability which would prevent him from effectively addressing the Committee regarding the charges herein. Notwithstanding his ability to make himself understood, Respondent could offer no satisfactory explanation for the false statements contained in the applications to New York state.

Two other states have, on three separate occasions, found Respondent unfit to practice within their jurisdiction. Based upon the clear and convincing evidence offered by Petitioner, evidence which was confirmed by Respondent, this body must agree with those authorities.

ORDER

WHEREFORE, Based upon the foregoing facts and conclusions,

It is hereby ORDERED that:

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

Furthermore, it is hereby ORDERED that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are SUSTAINED;

Furthermore, it is hereby ORDERED that;

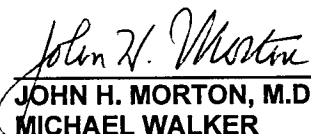
3. The license of Respondent to practice medicine in the State of New York is REVOKED;

Furthermore, it is hereby ORDERED that;

4. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated:
Rochester, New York

October 30 1995



JOHN H. MORTON, M.D., Chairperson
MICHAEL WALKER
JOSEPH E. GEARY, M.D.

TO:
CATHERINE CHOLAKIS, ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

JOEL HENRY MAYER, M.D.
6714 Gateshead Lane
Indianapolis, Indiana 46220

APPENDIX ONE

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

-----X
IN THE MATTER : NOTICE
OF : OF
JOEL HENRY MAYER, M.D. : HEARING
-----X

TO: JOEL HENRY MAYER, M.D.
6714 Gateshead Lane
Indianapolis, Indiana 46220

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 20rd day of September, 1995, at 10:00 in the forenoon of that day in Conference Room E, Cultural Education Building, Empire State Plaza, Albany, New York and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and

findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW SECTION 230-a
(McKinney Supp. 1995). YOU ARE URGED TO
OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: Albany, New York
August 15, 1995



PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to: Catherine Cholakis
Assistant Counsel
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
JOEL HENRY MAYER, M.D. : CHARGES

-----X

JOEL HENRY MAYER, M.D., the Respondent, was authorized to practice medicine in New York State on January 16, 1984 by the issuance of license number 157177 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about March 16, 1995, Respondent's application for a license to practice medicine in Kentucky was denied, and it was decided that the State Board of Medical Licensure (hereinafter "Kentucky Board") would not consider any future application from Respondent. The reasons given for this order were the results of a Board ordered neuropsychological evaluation which showed the Respondent was a "sick man", and Respondent's falsification of his licensure application.

- B. The conduct upon which the Kentucky Board denied Respondent's application for licensure would, if

committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(2) (McKinney Supp. 1995) [practicing the profession fraudulently] and/or N.Y. Educ. Law §6530(7) (McKinney Supp. 1995) [practicing while impaired by mental disability] and/or N.Y. Educ. Law §6530(21) (McKinney Supp. 1995) [willfully making a false report].

- C. On or about December 2, 1994, State of Michigan, Department of Commerce, Board of Medicine (hereinafter "Michigan Board") ordered Respondent be placed on probation for one year and his license to practice medicine in that state be "confined to pathology only with no patient contact".

- D. The Michigan Board found that Respondent had violated Michigan Public Health Code §16221(a), "a violation of general duty, consisting of negligence or failure to exercise due care...or any conduct, practice, or condition which impairs, or may impair, the ability to safely and skillfully practice the health profession", and Section 16221(b)(iii), a personal disqualification consisting of "[m]ental or physical disability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner", in that , the Michigan Board found that Respondent "does have a mental inability reasonably related to and adversely affecting his ability to

practice medicine in a safe and competent manner".

- E. The conduct upon which the Michigan Board limited Respondent's license would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(7) (McKinney Supp. 1995) [practicing while impaired by a mental disability].

- F. On or about January 25, 1991, the Kentucky Board denied Respondent's license application. The Board found that Respondent "suffers from serious emotional problems precluding Dr. Mayer from practicing competently". The Board further found that Respondent had clinical privileges suspended by the Department of the Air Force resulting from his "unprofessional conduct, poor interpersonal and professional relationships with support personnel and concern for the clinical adequacy of his practice of medicine".

- G. The conduct upon the Kentucky Board denied Respondent's licensure application would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(1) (McKinney Supp. 1995) [practicing while impaired by a mental disability].

- H. Respondent, on or about November 16, 1992, filed a Registration Application for the period January 1, 1993 through December 31, 1994 with the New York State

Education Department.

1. Respondent answered "No" to the application question "Since you last registered has any hospital or licensed facility restricted or terminated your professional training employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional conduct, incompetence or negligence" when, in fact, in December 1991 the Naval Hospital in Millington, Tennessee, revoked Respondent's privileges at that facility, and recommended Respondent submit to a psychiatric examination, and Respondent knew such facts.

I. Respondent, on or about October 20, 1994, filed a Registration Application for the period January 1, 1995 through July 31, 1997 with the New York State Education Department.

1. Respondent answered "No" to the application question "Since you last registered has any state other than New York instituted charges against you for professional misconduct, unprofessional conduct, incompetence or negligence or revoked, suspended, or accepted surrender of a professional license held by you" when, in fact, in December 1992 the Attorney General of the state of Michigan filed an administrative complaint with the Michigan Board of medicine charging Respondent with violations of the Public Health Code, in December 1992, a hearing was held before the Michigan Board of Medicine and Respondent did participate in that proceeding, and Respondent knew such facts.

FIRST SPECIFICATION

HAVING OTHER DISCIPLINARY ACTION TAKEN

OR APPLICATION FOR LICENSE REFUSED

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1995) by reason of his having had other disciplinary action taken and/or having his

application for a license refused, where the conduct resulting in the action 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, B, C, D, E, F and/or G.

SECOND AND THIRD SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(20) (McKinney Supp. 1995) by reason of his conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

2. The facts in paragraphs H and H.1.
3. The facts in paragraphs I and I.1.

FOURTH AND FIFTH SPECIFICATIONS

WILLFULLY FILING A FALSE REPORT

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(21) (McKinney Supp. 1995) by reason of his willfully making or filing a false report, in that Petitioner charges:

4. The facts in paragraphs H and H.1.
5. The facts in paragraphs I and I.1.

SIXTH AND SEVENTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(2) (McKinney Supp. 1995) by reason of his practicing the profession fraudulently, in that Petitioner charges:

6. The facts in paragraphs H and H.1.
7. The facts in paragraphs I and I.1.

DATED: *July 17*, 1995
Albany, New York

Peter D. Van Buren

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