



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Richard F. Daines, M.D.
Commissioner
NYS Department of Health

Keith W. Servis
Director
Office of Professional Medical Conduct

Public

Kendrick A. Sears, M.D.
Chair

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

April 9, 2007

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Philip Chaim Don, M.D.
2600 Netherland Avenue
Apt. 81N
Riverdale, New York 10463

Re: License No. 172357

Dear Dr. Don:

Enclosed is a copy of Modification to Order #BPMC 05-152 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect April 16, 2007.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to the Board for Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary

Board for Professional Medical Conduct

Enclosure

cc: Gregory J. Naclerio, Esq.
Ruskin Moscou Faltischek, P.C.
East Tower, 15th Floor
1425 Reckon Plaza
Uniondale, New York 11556-1452

IN THE MATTER
OF
PHILIP CHAIM DON, M.D.

MODIFICATION OF AND
SUPPLEMENT TO
DETERMINATION AND
ORDER OPMC NO. 05-152

The following Modification and Supplement is submitted to the Office of Professional Medical Conduct for its acceptance and adoption as an agreed modification of and supplement to Determination and Order OPMC No. 05-152 (hereinafter "Original Order"). The Modification and Supplement has been signed by Respondent, attorney for Respondent, and counsel for the Department of Health.

Determination and Order OPMC No. 05-152, is, modified and supplemented, hereby, to add the following paragraphs in the Original Order:

2. Respondent's medical license is permanently restricted in that Respondent shall examine and/or treat any female patients 18 years of age or younger only in the presence of a parent and/or guardian. The parent's and/or guardian's presence should be noted in the patient's medical record.
3. That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

RUSKIN MOSCOU FALTSCHER

p. 1

003

The above changes are agreed to by and between the undersigned and are submitted to the Office of Professional Medical Conduct for acceptance and incorporation into Determination and Order OPMC No. 05-152.

DATE: 3/27/07

Philip Chaim Don, M.D.
PHILIP CHAIM DON, M.D.
Respondent

DATE: 3/27/07

Gregory Naglerio
GREGORY NAGLERIO
Attorney for Respondent

DATE: 3/28/07

Robert Boganfats
ROBERT BOGAN
Associate Counsel

DATE: 4/5/07

Keith W. Servis
KEITH W. SERVIS
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF ORDER
PHILIP CHAIM DON, M.D.

Upon the proposed agreement of PHILIP CHAIM DON, M.D., (Respondent), for Modification and Supplement amending Determination and Order 05-152, which is made a part, hereof, it is agreed and

ORDERED, that the application and the provisions thereof are adopted, hereby, and so ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, or upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 4-9-2007



KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct



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

July 19, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Philip Chaim Don, M.D.
2600 Netherland Avenue
Apt. 815N
Riverdale, New York 10463

Gregory J. Naclerio, Esq.
Ruskin, Moscou Falischer, P.C.
East Tower, 15th Floor
190 EAB Plaza
Uniondale, New York 10556-0190

Philip Chaim Don, M.D.
242 Naples Terrace
Bronx, New York 10463

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Division of Legal Affairs
Office of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180

RE: In the Matter of Philip Chaim Don, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-152) 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.

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.

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.

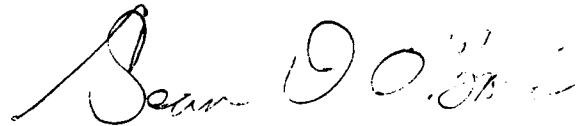
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink, appearing to read "Sean D. O'Brien". The signature is fluid and cursive, with a large initial "S" and "D".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

COPY

DETERMINATION

AND

ORDER

OPMC NO. 05-152

IN THE MATTER
OF
PHILIP CHAIM DON, M.D.

A Notice of hearing, dated April 18, 2005, and a Statement of Charges, dated the same date, were served upon the Respondent, **PHILIP CHAIM DON, M.D.** **ROBERT A. MENOTTI, MD.**, Chairperson, **LYON M. GREENBERG, M.D.¹**, and **THOMAS W. KING, JR., M.P.A., P.E.**, 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. **STEPHEN L. FRY, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer.

The Department of Health ("the Department") appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared by **GREG NACLERIO, ESQ.**, of Counsel.

Evidence was received and witnesses sworn and heard, and transcripts of these proceedings were made.

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

¹ Dr. Greenberg replaced William K. Major, Jr., M.D. on the hearing committee after Dr. Major was dismissed during the first day of the hearing when it became apparent to him that he had been on the investigation

PROCEDURAL HISTORY

Answer Filed	June 9, 2005
Pre-Hearing Conference	June 23, 2005
Witnesses for Petitioner	None
Witnesses for Respondent	Philip Chaim Don, M.D.
Hearing Dates	June 23, 2005 July 11, 2005
Deliberation Date(s)	July 11, 2005

STATEMENT OF CASE

The State Board for Professional Misconduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq of the Public Health Law of the State of New York [hereinafter P.H.L.]).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the P.H.L. Philip Chaim Don, M.D. ("Respondent") is charged with :
professional misconduct, as defined in §6350 of the Education Law of the State of New York ("Education Law"). Specifically, Respondent is charged with one specification of misconduct by

committee that referred this case for the issuance of charges. Dr. Greenberg avers that he has read the transcript from the first hearing date as well as all the exhibits.

² At the hearing, the Department withdrew specification #3, conduct in the practice of medicine evidencing moral unfitness to practice.

conviction of the crime of Sexual Abuse in the Third Degree. A copy of the Statement of Charges is attached to this Determination and order as Appendix I.

Respondent admits that he pled guilty to the crime of Sexual Abuse in the Third Degree.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers or letters below in parentheses refer to exhibits (denoted by the prefix "Ex."). These citations, along with references to testimony adduced at the hearing, refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding.

Having heard testimony and considered documentary evidence presented by the Petitioner and Respondent, respectively, the Hearing Committee hereby makes the following findings of fact::

PHILIP CHAIM DON, M.D., the Respondent, was authorized to practice medicine in New York State on September 15, 1987, by the issuance of license number 172357 by the New York State Education Department, and has a current registration address of 242 Naples Terrace, Bronx, NY 10463. (Ex. 4)

On October 23, 2002 at 5:00 P.M., Respondent was arrested at 45th Street and Broadway for the alleged commission of _____ crime related to sexual abuse at that location. The allegation _____ that Respondent allegedly touched a female with his penis through his clothes. (Ex. 5, arrest report)

REDACTION

On February 24, 2004, Respondent pled guilty in the Criminal Court of the City of New York, County of New York, to the crime of Sexual Abuse in the Third Degree (Penal Law §130.55) relating to the incident for which he had been arrested. Respondent admitted at that time that he had subjected the victim of the crime to sexual contact without her consent on the date of the arrest (Ex. 5, Criminal Court transcript pp. 3-4).

DISCUSSION AND CONCLUSIONS

REDACTION

specification alleges that respondent was convicted of a crime under New York State law in violation of New York Education Law §6530(9)(a)(i).

REDACTION

REDACTION

Factual Allegation C and the Specification in the Statement of Charges

It is clear from the evidence, and admitted by Respondent, that on February 24, 2004, he pled guilty in the Criminal Court of the City of New York, County of New York, to

the crime of Sexual Abuse in the Third Degree (Penal Law §130.55) relating to the incident for which he had been arrested. A person is guilty of sexual abuse in the third degree, a class B misdemeanor, when he subjects another person to sexual contact without the latter's consent.

Respondent committed misconduct under New York Education Law §6530(9)(a)(i) by reason of this conviction, and he is, as a result, subject to discipline as set forth below.

DETERMINATION AS TO PENALTY

The Hearing Committee concludes that the appropriate penalty in this case is the issuance of a **CENSURE AND REPRIMAND**.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L §230-a, including:

- (1) Censure and reprimand;
- (2) Suspension of the license, wholly or partially;
- (3) Limitations of the license to a specified area or type of practice;
- (4) Revocation of the license;
- (5) Annulment of the license or registration;
- (6) Limitations on registration or the issuance of any further license;
- (7) The imposition of monetary penalties;
- (8) A course of education or training;
- (9) Performance of public service, and
- (10) Probation.

The Hearing Committee feels that Respondent's conviction is a serious matter requiring the imposition of a penalty, but that revocation or suspension of his license are not necessary. There are several reasons the Hearing Committee reaches this conclusion.

First, the conviction, although serious by definition, is one of the least serious crimes for which someone can be convicted, as measured by its rating as a class B misdemeanor. Furthermore, this was, as far as this record reveals, an isolated occurrence. Respondent has no known prior or subsequent history of activity of the sort that led to the criminal conviction. In addition, the incident did not occur in the course of Respondent's practice of medicine, and there is no evidence that Respondent has ever engaged in any sexual

activity involving a patient. This finding is one of the factors that leads the Hearing Committee to conclude that Respondent presents no future danger to patients.

This conclusion was supported further by the opinions of Allan I. Stempler, M.D., who performed a psychiatric evaluation of Respondent and reviewed pertinent documents (Ex. F) and Stanley L. Portnow, M.D, F.A.P.A., who performed a forensic psychiatric evaluation. Both practitioners concluded that Respondent, although suffering from emotional distress stemming from his arrest and its aftermath, does not have a sexual disorder. Respondent also produced affidavits from friends and colleagues (Ex.'s attesting to his character, compassion, public service, religious dedication, and medical skills and accomplishments.

The Hearing Committee is of the unanimous opinion that the stigma and punishment Respondent has already suffered as a result of his arrest and conviction, coupled with the Censure and Reprimand meted out in this decision, will be more than sufficient as warnings and deterrents to ensure that Respondent will not, in the future, engage in the type of conduct for which he was convicted. If the Hearing Committee felt that there was any risk that Respondent might engage in future acts of sexual misbehavior, it would impose a period of probation in addition to the Censure and Reprimand, but that is not the case. Respondent is, the Hearing Committee believes, acutely aware that any future misbehavior of a sexual nature, or any future criminal convictions, could seriously jeopardize his medical license.

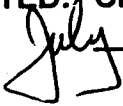
ORDER

IT IS HEREBY ORDERED THAT:

1. A **CENSURE AND REPRIMAND** is hereby imposed against Respondent, **PHILIP CHAIM DON, M.D.**

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Clinton, New York
July 19, 2005



ROBERT A. MENOTTI, MD.
Chairperson

LYON M. GREENBERG, M.D.
THOMAS W. KING, JR., M.P.A., P.E.

APPENDIX 1

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

PHILIP CHAIM DON, M.D.
CO-03-11-5094-A

STATEMENT

OF

CHARGES

PHILIP CHAIM DON, M.D., the Respondent, was authorized to practice medicine in New York state on or about September 15, 1984, by the issuance of license number 172357 by the New York State Education Department.

FACTUAL ALLEGATIONS

Redaction

On or about February 24, 2004, in the Criminal Court of the City of New York, County of New York, Part C, New York, Respondent was found guilty, based on a plea of guilty, of sexual abuse in the third degree, in violation of New York State Penal Law, Section 130.55, a class B misdemeanor, and was sentenced to a conditional discharge and a \$120.00 surcharge.

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A. ^{1/2}

REDACTION

DATED: *April 18*, 2005
Albany, New York

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