



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

December 11, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michele Y. Tong, Esq.
David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Marc Cray, M.D.
1917 Taffeta Trail
Lithonia, Georgia 30038

RE: In the Matter of Marc Cray, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 97-304) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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-

MARC CRAY, M.D.

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE
BPMC ORDER
NO. 97- 304

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated October 7, 1997 which were served upon **MARC CRAY, M.D.**, (hereinafter referred to as "Respondent"). **STANLEY GITLOW, M.D.**, Chairperson, **STEVEN M. LAPIDUS, M.D.**, and **MICHAEL A. GONZALEZ, RPA.**, 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 November 10, 1997 at Five Penn Plaza, New York, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **MICHELE Y. TONG, ESQ.**, Assistant Counsel and **DAVID W. SMITH, ESQ.**, Associate Counsel, Bureau of Professional Medical Conduct. Respondent neither appeared in person nor by counsel. Evidence was received. A transcript of these proceedings was made.

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

PRELIMINARY STATEMENT

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 Section 6530(9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(a)(iii) (having been convicted of a crime under the laws of another jurisdiction, here, the State of Georgia). 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.

Respondent made no appearance whatsoever in this proceeding. The Administrative Law Judge found that popper service had been made by Petitioner and that therefore, the State had obtained jurisdiction and furthermore, Respondent was in default.

FINDINGS OF FACT

The Committee adopts the factual statements set forth on page one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS
WITH REGARD TO
FACTUAL ALLEGATIONS
SPECIFICATIONS
AND
PENALTY

Petitioner herein has proven by a preponderance of the evidence that Respondent was found guilty of a number of crimes the laws of another state. Therefore, the Factual Allegations and Specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

This Respondent has chosen not to participate in this proceeding notwithstanding sufficient legal notice. The respondent has suffered from drug dependency which has interfered materially with his function as a physician. Efforts to rehabilitate him have thus far failed. Revocation is the only appropriate sanction.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby ORDERED that:

1. The Factual allegations in the Statement of Charges (Appendix One) 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;

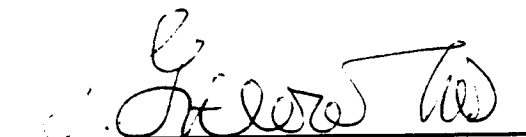
3. The license of Respondent to practice medicine in the state of New York is hereby REVOKED;

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:
New York, New York

Dec 8, 1997


STANLEY GITLOW, M.D., Chairperson

STEVEN M. LAPIDUS, M.D.
MICHAEL A. GONZALEZ, RPA.

TO:

MICHELE Y. TONG, ESQ.

Assistant Counsel

DAVID W. SMITH, ESQ.

Associate Counsel

Bureau of Professional Medical Conduct

Corning Tower

Albany, N.Y. 12237

MARC CRAY, M.D.

1917 Taffeta Trail

Lithonia, Georgia 30038

APPENDIX ONE

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

IN THE MATTER
OF
MARC CRAY, M.D.

STATEMENT
OF
CHARGES

MARC CRAY, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 19, 1988, by the issuance of license number 173463 by the New York State Education Department. In or about January 1989, Respondent, temporarily surrendered his New York state medical license based on drug and alcohol impairment. By correspondence to the Office of Professional Medical Conduct dated July 9, 1997, Respondent has requested restoration of his New York license.

FACTUAL ALLEGATIONS

- A. Between the period of April 6, 1992 and February 14, 1996, Respondent was convicted of the following crimes, all committed in DeKalb County Georgia:
1. April 1992: one count of theft by shoplifting and one count of improperly transferred license plates;
 2. July 1992: twenty-three counts of issuing bad checks;
 3. July 1993: one count of battery and one count of criminal trespass;
 4. December 1994: one count of giving a false name to a law enforcement officer;
 5. January 1996: one count of driving with a suspended license, one count of giving a false name to a law enforcement officer,

one count of driving under the influence of alcohol, and two counts of leaving the scene of an accident; and

6. February 1996: one count of driving under the influence of drugs, one count of driving while his license was suspended or revoked and one count of unlawful possession of cocaine under the Georgia controlled substances act.

- B. On or about April 3, 1997, the Georgia Composite State Board of Medical Examiners issued a Consent Order suspending Respondent's medical license, based upon Respondent's February 1996 convictions for cocaine possession and driving under the influence. These convictions violated a prior consent order entered into between the Respondent and the Georgia Board on September 3, 1992, requiring Respondent, inter alia, to completely abstain from the use of mood altering substances.

FIRST SPECIFICATION

CRIMINAL CONVICTION (Other Jurisdiction)


Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii)(McKinney Supp. 1997) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law [namely N.Y. Penal Law § 155.25, §190.05, §120.00, §145.00, §195.05, §220.06 and N.Y. Vehicle and Traffic Law §403, §511(1)(a) and §1192(4), as alleged in the facts of the following:

1. Paragraph A and A1-6.

SECOND SPECIFICATION
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1997) by 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 [namely N.Y. Educ. Law §6530(8), (9)(a)(iii) and (29)].

DATED: October 2, 1997
 New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct