



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

Wendy E. Saunders  
Chief of Staff

September 17, 2008

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David Shoemaker, M.D.

Redacted Address

Robert Bogan, Esq.  
NYS Department of Health  
Hedley Bldg. - 4<sup>th</sup> Floor  
433 River Street  
Troy, New York 12180

Peter Chavkin, Esq.  
Mintz, Levin, Cohn, Ferris,  
Glovsky & Popeo, P.C.  
666 Third Avenue  
New York, New York 10017

**RE: In the Matter of David Shoemaker. M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-176) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER  
OF  
DAVID SHOEMAKER, M.D.

DETERMINATION

AND

ORDER

BPMC #08-176

A hearing was held on August 20, 2008, at the offices of the New York State Department of Health ("Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated March 24, 2008, were served upon the Respondent, **David Shoemaker, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **C. Deborah Cross, M.D.**, Chairperson, **Alexander M. Yvars, M.D.**, and **Janet Miller, R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **William J. Lynch, Esq.**, Administrative Law Judge, served as the Administrative Officer.

Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. Respondent appeared in person and was represented by Mintz Levin, PC, **Peter A. Chavkin, Esq.**, of Counsel.

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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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)(b) and 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

## WITNESSES

For Petitioner:	None
For Respondent:	David Shoemaker, M.D.

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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.

1. David Shoemaker, M.D., the Respondent, was authorized to practice medicine in New York State on June 15, 1989, by the issuance of license number 178343 by the New York State Education Department (Petitioner's Ex. 4).

2. On August 2, 2007, the Board of Medical Examiners, State of Oregon ("Oregon Board") by a Final Order reprimanded Respondent, required him to pay the costs of the hearing, and suspended his license to practice medicine until he becomes Board certified in radiology by the American Board of Medical Specialties (ABMS) recognized American College of Radiology, based on unprofessional practice and repeated acts of negligence (Petitioner's Ex. 5).

3. On July 10, 2008, the Oregon Board modified its Final Order to provide that Respondent's license was lapsed rather than suspended, and to provide that Respondent was eligible to apply for a license limited to a retraining program approved by the Oregon Board's Medical Director (Petitioner's Ex. 6).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;" and New York Education Law Section 6530(5) - "Practicing the profession with incompetence on more than one occasion."

## VOTE OF THE HEARING COMMITTEE

### FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by 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)

### SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having his license suspended and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

## HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Oregon Board found that the Respondent had engaged in unprofessional conduct, in that Respondent violated the standard of care in his treatment of eight patients. The Oregon Board's findings state that Respondent's diagnostic misinterpretations and his failure to perform additional diagnostic work when indicated demonstrated an inattention to detail in his practice and the need for further training. The Oregon Board suspended Respondent's Oregon license and conditioned reinstatement of his license upon his becoming Board certified in radiology by the

American Board of Medical Specialties (ABMS) recognized American College of Radiology. Thereafter upon the Respondent's request, the Oregon Board amended its Order to permit Respondent to participate in an accredited training program.

Respondent testified at the hearing in New York on his own behalf. He presented with a positive attitude and did not contest the findings made in Oregon. He explained that he serviced two larger hospitals in Oregon and three Level II trauma centers in Washington between 1998 and 2003, traveling by plane between the five facilities. He stated that the eight cases cited in the Oregon Order occurred during this time period. Seven of the eight were from a rural, isolated, ten-bed facility, and the eighth case was at a facility on the Oregon coast which occurred while Respondent was substituting for another radiologist. He expressed remorse for his prior conduct and a willingness to remediate his skills.

Respondent acknowledged that he needed further training and asked that New York allow him the opportunity to participate in an accredited training program in this State. He explained that he is being considered for a one-year fellowship in vascular and interventional radiology in the Department of Radiology at the Columbia University Medical Center, and that various other training opportunities are available in New York that are not available in the Northwest. He further testified that he would be able to receive the benefit of the oral board preparatory tutelage given to senior residents that begins approximated six months before the oral boards are administered.

The Department acknowledged that Respondent's testimony appeared sincere, but contended that Respondent was not able to practice medicine safely at this time without a practice monitor. In the event that the Hearing Committee determined that Respondent should be able to continue to practice medicine, the Department recommended that a limitation be placed on his license that permitted him to practice only in a training program

that is acceptable to the Department as well as the State of Oregon, that a practice monitor be imposed, and that the license limitation not be lifted until Respondent became Board certified in radiology.

On his own behalf, Respondent testified that he had disclosed the pending disciplinary matter to the training program at Columbia University Medical Center, and that he had submitted a copy of the Oregon order to the program with his curriculum vitae. He expressed no opposition to a license limitation which would permit him to practice in an accredited training program and contended that an appropriate training program would provide him with a mentor who would supervise his actions. Respondent expressed a concern, however, that an accredited training program might not permit the encroachment of a formal practice monitor arrangement. As an alternative to the potential requirement of a formal practice monitor, Respondent suggested that the proposed training program identify a liason who would be available to report to the Department upon the Department's request.

The Hearing Committee found Respondent's testimony to be credible and felt that Respondent would be able to safely resume the practice of medicine without restriction if he obtained sufficient training and was successful in becoming Board certified in radiology. Accordingly, the Hearing Committee is persuaded that imposing a discipline similar to that imposed by the Oregon Board will protect the citizens of New York. Accordingly, the Committee has decided, as recommended by the Department, to limit Respondent's license to the practice of medicine in a training program accredited by the Accreditation Council for Graduate Medical Education (ACGME). The Committee agrees with Respondent that a formal practice monitor is not required, but feels that merely identifying a mentor in the training program to act as a liason is insufficient. Instead, the Committee believes a physician in the proposed training program who is Board certified in radiology



must be made responsible for conducting a random review of no less than fifteen of Respondent's cases on a quarterly basis and providing a written report to the Director of the Office of Professional Medical Conduct ("OPMC"). Additionally, the Hearing Committee feels that short term programs would be ineffective and that Respondent's license should be limited to training programs of no less than one-year's duration.

The Hearing Committee finds that the one-year fellowship in vascular and interventional radiology in the Department of Radiology at the Columbia University Medical Center would be an appropriate training program for Respondent as long as the program is willing to identify a physician on its staff to undertake the responsibilities outlined in the above paragraph. Prior to practicing in any other training program, however, Respondent must obtain the prior written approval of the Director of OPMC.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. Respondent's license to practice medicine in the State of New York is limited pursuant to Public Health Law Section 230-a(3) to restrict the Respondent to the practice of medicine in the one year fellowship in vascular and interventional radiology in the Department of Radiology at Columbia University Medical Center proposed by Respondent at the hearing in this matter or such other ACGME accredited training program of no less than one year's duration which shall be proposed by the Respondent and subject to the prior written approval of the Director of OPMC.
2. Respondent shall practice medicine in such fellowship or training program only when a licensed physician, board certified in Radiology, has been identified to conduct a random review of no less than 15 of Respondent's cases on a quarterly basis.

Respondent shall ensure that the identified physician submits a quarterly written report to the Director of OPMC.

3. In the event Respondent successfully completes the training program and becomes Board certified in radiology by the American Board of Medical Specialties (ABMS) recognized American College of Radiology, Respondent may apply to OPMC to have this limitation on his license removed.

4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

**DATED: Briarcliff Manor, New York**  
9/15/08, 2008

**C. Deborah Cross, M.D.**  
Chairperson

**Alexander M. Yvars, M.D.**  
**Janet Miller, R.N.**

TO:

David Shoemaker, M.D.  
1192 Lawson Ln.  
Walla Walla, WA 99362

Peter Chavkin, Esq.  
Mintz, Levin, Cohn, Ferris,  
Glovsky and Popeo, PC  
Attorney for Respondent  
666 Third Avenue  
New York, New York 10017

Robert Bogan, Esq.  
Attorney for Petitioner  
NYS Department of Health  
Bureau of Professional Medical Conduct  
433 River Street, Suite 303  
Troy, New York 12180-2299

# APPENDIX 1

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

EXHIBIT  
1 EV.  
8/20/08 NJ

IN THE MATTER  
OF  
DAVID SHOEMAKER, M.D.  
CO-07-09-5316-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: DAVID SHOEMAKER, M.D.  
Redacted Address

DAVID SHOEMAKER, M.D.  
Redacted Address

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§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 17<sup>th</sup> day of April, 2008, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of 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 answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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

*March 27*, 2008

Redacted Signature

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

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0828

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

IN THE MATTER  
OF  
DAVID SHOEMAKER, M.D.  
CO-07-09-5316-A

STATEMENT  
OF  
CHARGES

DAVID SHOEMAKER, M.D., Respondent, was authorized to practice medicine in New York state on June 15, 1989, by the issuance of license number 178343 by the New York State Education Department.

FACTUAL ALLEGATIONS

*Boylor/08*

A. On or about August ~~2~~ 2007, the Board of Medical Examiners, State of Oregon, (hereinafter "Oregon Board") by a Final Order (hereinafter "Oregon Order"), reprimanded Respondent, required him to pay the costs of the hearing, and suspended his license to practice medicine until he becomes Board certified in radiology by the American Board of Medical Specialty recognized American College of Radiology, based on unprofessional and dishonorable conduct and repeated acts of negligence.

B. The conduct resulting in the Oregon Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
  2. New York Education Law §6530(4) (gross negligence);
  3. New York Education Law §6530(5) (incompetence on more than one occasion);
- and/or
4. New York Education Law §6530(6) (gross incompetence).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by 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 A and/or B.

**SECOND SPECIFICATIONS**

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *March 24*, 2008  
Albany, New York

Redacted Signature

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