



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

September 19, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michele Howe, D.O.
182 Kindermack Road
Parkridge, New Jersey 07657

Joseph M. Gorrell, Esq.
101 Eisenhower Parkway
Roseland, NJ 07068-1067

Kimberly A. O'Brien, Esq.
NYS Department of Health
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237

Effective Date: 09/26/96

RE: In the Matter of Michele Howe, D.O.

Dear Dr. Howe, Mr. Gorrell and Ms. O'Brien:

Enclosed please find the Determination and Order (No. BPMC-96-214) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

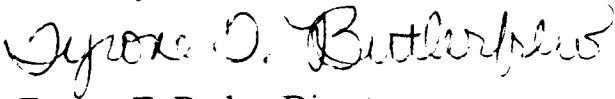
The notice of review served on the Administrative Review Board should be forwarded to:

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 initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

**IN THE MATTER
OF
MICHELE HOWE, D.O.**

DETERMINATION

AND

ORDER

BPMC-96-214

A Notice of Hearing and Statement of Charges each dated June 19, 1996 was served upon the Respondent, **MICHELE HOWE, D.O. WILLIAM P. DILLON, M.D.**, (Chairperson), **WILLIAM W. FALON, M.D.** and **REV. EDWARD J. HAYES**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100)(e) of the Public Health Law. **JEFFREY ARMON, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on July 24, 1996. The Department of Health appeared by **KIMBERLY A. O'BRIEN, ESQ.**, Senior Attorney. The Respondent appeared and was represented by **JOSEPH M. GORRELL, ESQ.** Evidence was received, witnesses were sworn and heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

The case was brought pursuant to Public Health Law Section 230(10)(p). The 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). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by a Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Michele Howe, D.O., (hereinafter "Respondent") was authorized to practice medicine in New York State on October 12, 1990 by the issuance of license number 184250 by the New York State Education Department. (Ex. 2)
2. On or about January 17, 1996, Respondent entered into a Consent Order with the New Jersey State Board of Medical Examiners to resolve an investigative report that Respondent had indiscriminately prescribed excessive amounts of Percocet, a controlled substance, to one patient during the period of August, 1987 to October, 1990. Respondent's treatment of the patient included excessive prescribing of Percocet without medical rationale, treatment plan or evidence of informed consent. (Ex. 3)

3. By such Order, Respondent agreed to be reprimanded for her conduct and to attend and successfully complete a continuing medical education course in the proper use of controlled dangerous substances within 12 months of the final order. (Ex. 3)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the New Jersey Board took disciplinary action against Respondent's license to practice medicine in that State. The basis for the New Jersey Board's action was conduct which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law Sections 6530(3) [practicing the profession with negligence on more than one occasion]; 6530(4) [practicing the profession with gross negligence on a particular occasion]; 6530(5) [practicing the profession with incompetence on more than one occasion]; and 6530(6) [practicing the profession with gross incompetence]. The Hearing Committee voted to sustain the Specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent should receive a censure and reprimand in satisfaction of the charge which it had sustained. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee rejected the Department's request that a practice monitor be required to review Respondent's prescribing practices. The Hearing Committee believed that Respondent's excessive prescribing for the one patient at issue was an isolated incident. While not intending to minimize the seriousness of her misconduct, the Committee concluded that Respondent exhibited, through her testimony, an insight into her conduct which indicated a recognition of her impropriety in the treatment of that patient. It also noted the extent to which her prescribing practices are reviewed in her current position as Medical Director of an office of Health Net Medical Group-Urgent Care.

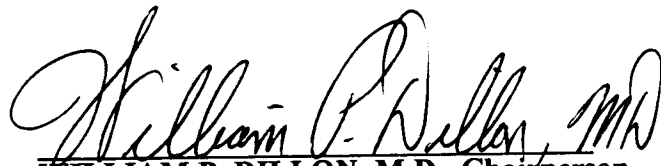
Respondent also testified that she has completed a continuing medical education course in the proper use of controlled substances. The Committee was convinced that Respondent has taken appropriate action to address the issues raised through the New Jersey disciplinary proceeding and determined that a censure and reprimand would serve as the most appropriate penalty in satisfaction of the Specification of misconduct which was sustained.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit 1) is **SUSTAINED;**
2. Respondent shall and does hereby receive a **CENSURE AND REPRIMAND;**
3. This Determination and Order shall be deemed effective upon service on the Respondent or the Respondent's attorney by personal service or seven days after mailing by certified or registered mail.

DATED: Albany, New York
9/18 1996


WILLIAM P. DILLON, M.D., Chairperson

WILLIAM W. FALON, M.D.
REV. EDWARD J. HAYES



TO: Kimberly A. O'Brien, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Michele Howe, D.O.
182 Kindermack Road
Parkridge, New Jersey 07657

Joseph M. Gorrell, Esq.
101 Eisenhower parkway
Roseland, New Jersey 07068-1067

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

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DEPTS
EXHIBIT 1
ID. M. EVD.
DATE: 7-24-96
BETSY HELM, CSR., RPR

IN THE MATTER : NOTICE OF
OF : REFERRAL
MICHELE HOWE, D.O. : PROCEEDING

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TO: MICHELE HOWE, D.O.
182 Kindermack Road
Parkridge, New Jersey 07657

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 10th day of July, 1996 at 10:00 in the forenoon of that day at the OGS Conference Room (at entrance to Corning Tower Building), South Mall, Concourse Level, Empire State Plaza, Albany, New York 12230.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 1, 1996.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 1, 1996 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

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
June 19, 1996

Peter D. Van Buren

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

Inquiries should be addressed to:

Kimberly A. O'Brien
Senior Attorney
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

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IN THE MATTER : STATEMENT
OF : OF
MICHELE HOWE, D.O. : CHARGES

-----X

MICHELE HOWE, D.O., the Respondent, was authorized to practice medicine in New York State on October 12, 1990 by the issuance of license number 184250 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

- A
1. The New Jersey State Board of Medical Examiners, [hereinafter "New Jersey Board"] and Respondent entered into a Consent Order or about January 17, 1996, Respondent's misconduct included excessive prescribing (1200 pills per month) of Percocet without: medical rationale, treatment plan or evidence of informed consent.
 2. The New Jersey Board reprimanded Respondent for the above conduct and required Respondent to attend and successfully complete a Continuing Medical Education Course in the proper use of Controlled Dangerous Substances, within 12 months of the final order.
 3. The conduct underlying the New Jersey Board's finding

of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(3) (McKinney Supp.1996) [practicing the profession with negligence on more than one occasion], and or N.Y. Educ. Law §6530(4) (McKinney Supp.1996) [practicing the profession with gross negligence], and or N.Y. Educ.Law §6530(5) (McKinney Supp.1996) [practicing the profession with incompetence on more than one occasion] and or N.Y. Educ.Law §6530(6) (McKinney Supp.1996) [practicing the profession with gross incompetence].

FIRST SPECIFICATION

DISCIPLINE BY OTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509(9)(d) (McKinney Supp. 1996) by reason of having disciplinary action taken against his license to practice medicine by a duly authorized professional disciplinary agency of another state, where the conduct resulting in disciplinary action involving the license 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.1 or A.2 and/or A.3.

DATED: *June 19*, 1996
Albany, New York

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