



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

August 24, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Morales Bloch, Esq.
NYS Department of Health
145 Huguenot Street
New Rochelle, New York 10801

Alan Lambert, Esq.
Lifshutz, Polland & Associates, P.C.
675 Third Avenue
New York, New York 10017

RE: In the Matter of Joseph T. Witek, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-188) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

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:nm
Enclosure

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

**IN THE MATTER
OF
JOSEPH T. WITEK, M.D.**

**COPY
DETERMINATION
AND
ORDER**

BPMC-98-188

ERWIN LEAR, M.D., Chairperson, **ELEANOR KANE, M.D.**, and **LOIS JORDAN**, duly designated members of the State Board of Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230 (1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230 (10)(e) and 230 (12) of the Public Health Law. **STEPHEN BERMAS, ESQ.** Administrative Law Judge, served as Administrative Officer of the Hearing Committee.

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

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	May 20, 1998
Statement of Charges dated:	May 20, 1998
Hearing Date:	June 24, 1998
Deliberation Date:	July 17, 1998
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, New York
Petitioner Appeared By:	Claudia Morales Block, Esq. Associate Counsel Bureau of Professional Medical Conduct NYS Department of Health

Respondent Appeared By:

Lifshutz, Pollard & Associates
by Alan Lambert, Esq.

STATEMENT OF CHARGES

The Statement of Charges has been marked as Petitioner's Exhibit 1 in evidence and attached hereto as Appendix A.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence. All Findings were unanimous.

1. **JOSEPH T. WITEK, M.D.**, the Respondent, was authorized to practice medicine in New York State on or about March 3, 1994, by the issuance of license number 195222 by the New York State Education Department (Ex. 2b).
2. On or about January 20, 1986, Respondent was convicted, in the State of Florida, of knowingly and willfully operating a motor vehicle while under the influence of an alcoholic beverage pursuant to Florida State Sec. 316.193, a first degree misdemeanor. (Ex. 3, 5, A&B)
3. On or about August 1, 1989, Respondent was convicted, in the State of Florida, of driving while under the influence or with an unlawful blood alcohol level, pursuant to Florida State Sec. 316.193, a first degree misdemeanor. (Ex. 3, 6, A&B)

4. Respondent testified that, in 1989, he was represented by an attorney and that he knew he had been convicted of the crime set forth in Findings 2 and 3, supra. (T. 130, 134-136)
5. Subsequent to the two convictions referred to in Findings 2 and 3, supra, and on or about December 21, 1992, Respondent made application for license and first registration of a New York state medical license with the New York State Education Department, Division of Professional Licensing Service (hereinafter referred to as "DPLS"). (Ex. 2b, T. 132-134)
6. In said application, Respondent willfully falsely answered "No" to the question which asked: "Have you ever been convicted of a crime (felony or misdemeanor) in any state or county?" (Ex. 2b, A&B; T. 130, 134-137)
7. Respondent testified that he applied for a New York state license because he had a job offer to read x-rays for a clinic in New York. (T. 136-137)8. On or about April 25, 1996, Respondent was convicted, in the State of Florida, of leaving the scene of an accident involving injury, pursuant to Florida Statute Sec. 316.027, a third degree felony; and driving while under the influence involving property damage or personal injury, pursuant to Florida Statute Sec. 316.193, a first degree misdemeanor. (Ex. 3, 7, A&B)
8. Respondent testified that he had committed the acts for which he was convicted, to wit: that he was driving while intoxicated at the time of the accident and that he left the scene of the accident. Furthermore, the police reports from this accident substantiate these facts. (Ex. 7, T. 93-94 and 139-140)
9. Pursuant to NY Penal Law Sec. 10.00, "crime" is defined as a misdemeanor or a felony.
(Ex. 4)

10. The acts for which Respondent was convicted, as set forth in Findings 9 and 10, supra, would, if committed in New York state, constitute a crime under New York state law, pursuant to NYS Vehicle and Traffic Law Sec. 600(2)(a) (leaving the scene of an incident where personal injury has been caused) and Sec. 1192(3) (driving while intoxicated). Both of these violations of the Penal Law are misdemeanors pursuant to Secs. 600(2)(b) and 1193(1)(b), respectively. (Ex. 3&4)

CONCLUSIONS OF LAW

FIRST: Respondent is found to have engaged in professional misconduct by having obtained his license to practice medicine fraudulently within the meaning of N.Y. Education Law § 6530 (1)(McKenney Supp. 1998) as set forth in Findings of Fact 1 through 7, supra.

SECOND: Respondent is found to have engaged in professional misconduct by having willfully made and/or filed a false report within the meaning of N.Y. Education Law § 6530 (21)(McKenney Supp. 1998) as set forth in Findings of Fact 1 through 7, supra.

THIRD: Respondent is found to have engaged in professional misconduct by having been convicted of committing an act constituting a crime under the law of the State of Florida which, if committed within the State of New York, would have constituted a crime under New York state law, within the meaning of N.Y. Education Law § 6530 (9)(a)(iii)(McKenney Supp. 1998) as set forth in Findings of Fact 8 through 11, supra.

MITIGATION

Respondent attempted unsuccessfully to convince the Committee that his license should not be revoked by reason of his treatment and rehabilitation efforts.

No witness was produced to testify, subject to cross-examination, about the details of the alleged treatment and rehabilitation programs and Respondent's involvement. The only evidence, other than Respondent's testimony, was a certificate of completion of a program that provided no details. (Ex. L)

Respondent did present an expert witness, Dr. Manuel Trujillo. However, Dr. Trujillo's credentials as an expert on alcohol dependency were limited. (Ex. C) Furthermore, Dr. Trujillo's evaluation of Respondent was only based upon one 90 minute session with Respondent and written summaries of clinical interviews of others.


The Committee did not find any of this testimony and evidence to be sufficient mitigation of Respondent's violations to justify the risk to the public in this state by permitting Respondent to retain his license to practice medicine.

In the event that Respondent decides at some future date to apply for a license to practice medicine in the State of New York, the Committee believes that he would be well advised to have previously successfully completed a rehabilitation program with monitoring that is acceptable to the New York State Department of Health.

ORDER

The Hearing Committee hereby determines and orders that Respondent's license to practice medicine in the State of New York be **REVOKED**.

DATED: New York, New York
August 19, 1998


ERWIN LEAR, M.D.

ELEANOR KANE, M.D.
LOIS JORDAN

APPENDIX I

IN THE MATTER
OF
JOSEPH T. WITEK, M.D.

STATEMENT
OF
CHARGES

JOSEPH T. WITEK, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 23, 1994, by the issuance of license number 195222 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 21, 1992, Respondent made application for license and first registration of a New York State medical license with the New York State Education Department, Division of Professional Licensing Service (hereinafter referred to as "DPLS"). In said application, Respondent willfully falsely answered "No" to the question on the application which asked: "Have you ever been convicted of a crime (felony or misdemeanor) in any state or county?" in that:
1. On or about January 20, 1986, Respondent was convicted in County Court, Pinellas County, Florida, of knowingly and willfully operating a motor vehicle while under the influence of an alcoholic beverage pursuant to Florida Statute Sec. 316.193, a first degree misdemeanor, and,
 2. On or about August 1, 1989, Respondent was convicted in Circuit

Court, Manatee County, Florida, of driving while under the influence or with an unlawful blood alcohol level, pursuant to Florida Statute Sec. 316.193, a first degree misdemeanor.

B. On or about April 25, 1996, Respondent was convicted in Circuit Court, Manatee County, Florida, of :

1. Hit and run, leaving the scene of an accident with injury, pursuant to Florida Statute Sec. 316.027, a third degree felony,
2. Driving while under the influence with property damage or personal injury, pursuant to Florida Statute Sec. 316.193, a first degree misdemeanor.
3. The acts of Respondent, as set for in paragraphs B(1) and B(2), supra, would, if committed in New York state, constitute a crime under New York state law, pursuant to NYS Vehicle and Traffic Law Secs. 600(2)(a) [leaving the scene of an incident where personal injury has been caused, a class A misdemeanor under Sec. 600(2)(b)], and Sec. 1192(3) [driving while intoxicated, a misdemeanor under Sec. 1193(1)(b)].
4. Respondent's criminal conviction referred to in paragraph B(2), supra, was his second conviction under the same Florida Statute within the preceding 10 years. Said repeat violation would be, if committed in New York state, a class E felony pursuant to NYS

Vehicle and Traffic Law Sec. 1193(1)(c).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

OBTAINING LICENSE FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(1)(McKinney Supp. 1998) by having obtained his license to practice medicine fraudulently as alleged in the facts of the following:

1. The facts in paragraphs A, A(1), and A(2).

SECOND SPECIFICATIONS

WILLFULLY MAKING AND FILING A FALSE REPORT

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law Section 6530(21) (McKinney Supp. 1998) by willfully making and/or filing a false report as alleged in the facts of the following:

2. The facts in paragraphs A, A(1), and A(2).

THIRD SPECIFICATION

CRIMINAL CONVICTION IN OTHER JURISDICTION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii)(McKinney Supp. 1998) 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 as alleged in the facts of the following:

3. The facts in paragraphs B, and B(1) through B(4).

DATED: May 20, 1998
New York, New York

A handwritten signature in black ink, appearing to read 'RN', is written over a horizontal line.

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct