



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

February 24, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Arthur Schwartz, M.D.
P.O. Box 641120
Kenner, Louisiana 70064-1120

Harry J. Boyer, Jr., Esq.
101 West Robert E. Lee Blvd.
Suite 401
New Orleans, Louisiana 70124

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180-2299

RE: In the Matter of Michael Arthur Schwartz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-037) 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 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 cursive script that reads "Sean D. O'Brien". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

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

IN THE MATTER
OF
MICHAEL ARTHUR SCHWARTZ, M.D.

DETERMINATION

AND

ORDER

BPMC NO. 05-037

A "Commissioner's Order and Notice of Referral Proceeding", and a Statement of Charges, both dated December 15, 2003, were served upon the Respondent, **MICHAEL ARTHUR SCHWARTZ, M.D.** **JERRY WAISMAN, M.D.**, Chairperson, **JAMES T. ADAMS, M.D.** and **MS. JEAN KRYM**, 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, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on February 17, 2005, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** The Respondent, although properly served with a Notice of Hearing and Statement of Charges, did not appear, file an answer or produce any evidence for consideration by the Hearing Committee.

Evidence was received from the Department at the hearing and transcripts of these proceedings are being 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 Sections 230(12)(b) and 230(10)(p). The first cited statute provides, in pertinent part, that when the duly authorized professional disciplinary agency of another jurisdiction has made a finding substantially equivalent to a finding that the practice of medicine by the licensee in that jurisdiction constitutes an imminent danger to the health of its people, the commissioner may order the licensee, by written notice, to discontinue or refrain from the practice of medicine in New York in whole or in part pending a hearing.

Section 230(10)(p) 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, the Respondent's Alabama medical license was suspended indefinitely by the Medical Licensure Commission of Alabama, ("the Alabama Commission") based upon findings that he had committed unprofessional conduct, and that he was unable to practice medicine with reasonable skill and safety to patients by reason of excessive use of drugs, narcotics, alcohol, chemicals or other substances, or as a result of a physical condition. This triggered the Commissioner's summary suspension of Respondent's New York license based upon the conclusion that the Alabama findings were

tantamount to findings that Respondent's practice presented an imminent danger to the health of residents, and the determination by the Department to charge Respondent with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions that would have constituted misconduct in New York under subdivisions (2), (7), (8), (15), (20), and (21). A copy of the Commissioner's Order and the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

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. All Hearing Committee findings were unanimous.

1. **MICHAEL ARTHUR SCHWARTZ, M.D.**, the Respondent, was authorized to practice medicine in New York State on December 15, 1998, by the issuance of license number 212765 by the New York State Education Department. (Ex. 5)
2. On October 19, 2001, the Alabama State Board of Medical Examiners ("the Alabama Board") issued an order directing Respondent to submit to a complete physical and comprehensive neuropsychological examination, including assessment of manual

dexterity associated with possible rheumatoid arthritis and evaluation for chemical dependency. This Order followed a referral by the Alabama Physician's Health Program based upon his refusal to be evaluated for possible impairment and to submit to random urine screens, as well as Respondent's informing "New York authorities" that he would not be returning to New York to practice medicine because of osteoarthritis, after he was investigated for failure to cooperate with the New York Physician's Health Program.

(Ex. 5)

3. On September 5, 2002, after Appellant failed and refused to submit to the ordered evaluation, the Alabama Commission issued an order finding Respondent guilty of unprofessional conduct and inability to practice medicine with reasonable skill and safety because of excessive use of drugs, narcotics, alcohol, chemicals or other substances, or as a result of a physical condition. As a result, the Commission indefinitely suspended Respondent's Alabama medical license and fined him \$5,000.

(Ex. 5)

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Alabama Commission's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(b) and (d), in that the conduct would have constituted misconduct in New York, had it been committed here, under:

- New York Education Law §6530(8) (being a habitual abuser of alcohol, or being dependent upon or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects; and

- New York Education Law §6530(15) (failure to comply with an order of the Board to undergo a medical or psychiatric examination).¹

VOTE OF THE HEARING COMMITTEE

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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: SUSTAINED (3-0)

SERVICE

The Administrative Law Judge ruled prior to the start of the hearing that the Department served Respondent with notice of this proceeding and the statement of

¹ The Hearing Committee finds no support in the Alabama Order for the New York charges that Respondent's conduct would have constituted misconduct in New York under subdivision (2) (practicing the profession fraudulently), subdivision (20) (moral unfitness) or (21) (willfully making or filing a false report). In addition, the Alabama Order does not find Respondent guilty of practicing while impaired, so there can no finding to that effect in this decision.

charges in accordance with the standards set forth in Public Health Law §230(10)(d). This statute requires personal service, or service by registered or certified mail sent "to the licensee's last know address" if personal service cannot be made after due diligence. In this case, it was clear from the documentary evidence and the representations of the Department's attorney at the hearing that Respondent was properly served with notice of the hearing, that he received numerous adjournments at his request, and that he was aware the hearing would proceed on February 17, 2005 whether or not he appeared.

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent's Alabama license was indefinitely suspended, as set forth above, after he failed and refused to undergo a complete physical and comprehensive neuropsychological examination mandated by the Alabama Board. This evaluation was ordered because he had been referred by the Alabama Physician's Health Program based upon his refusal to be evaluated for possible impairment and to submit to random urine screens, and because he had informed "New York authorities" that he would not be returning to New York to practice medicine because of osteoarthritis, after he was investigated for failure to cooperate with the New York Physician's Health Program.

The Alabama findings constitute the basis for New York misconduct findings against Respondent as set forth above. Accordingly, the only issue to be addressed in this decision is the penalty to be imposed against Respondent for this misconduct.

Unfortunately, there is no evidence in this record that suggests that Respondent has taken any steps to regain his Alabama license or that he is not a danger to patients because of his physical condition and/or substance abuse. As far as this record reveals,

Respondent has never undergone an evaluation of the type ordered by the Alabama Board.

This leaves the Hearing Committee in a difficult position with respect to the determination of a penalty in this case. Had Respondent undergone an appropriate evaluation, the report therefrom might have detailed the precise nature of any physical and/or alcohol/substance abuse problems the Respondent might have, offered an assessment of the degree of danger his continued ability to practice in New York would present, and recommended treatment/rehabilitation options.

The Hearing Committee feels that had it had such a report to consider, or other evidence regarding Respondent's current physical/mental/substance abuse condition, it might have been in a position, if appropriate, to fashion a penalty that both afforded protection to the residents of New York and offered Respondent an opportunity to receive any appropriate treatment and/or rehabilitation.

However, that is not the case. Respondent's failure to appear at this hearing, to file an answer, or to provide any evidence for consideration makes it impossible for the Hearing Committee to conclude that Respondent has any interest in maintaining his New York medical license, or that he could practice safely in this state if allowed to retain it. Since this Hearing Committee is not in a position to further evaluate Appellant or to monitor his condition in the future, it feels that Respondent has left it with no choice but to revoke his New York license. Respondent may apply for reinstatement of his license after three years, and if he does so, should be prepared to establish that he has corrected the problems that led to the Alabama orders and that he can safely practice in this state.


ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **MICHAEL ARTHUR SCHWARTZ, M.D.** is hereby **REVOKED.**

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

DATED: New York, New York
Feb. 23, 2005


JERRY WAISMAN, M.D.
Chairperson

JAMES T. ADAMS, M.D.
MS. JEAN KRYM

APPENDIX 1

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



IN THE MATTER
OF
MICHAEL ARTHUR SCHWARTZ, M.D.
PM-02-11-5910-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: MICHAEL ARTHUR SCHWARTZ, M.D.
P.O. Box 641120
Kenner, LA 70064-1120

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached, hereto, and made a part hereof, has determined that **MICHAEL ARTHUR SCHWARTZ, M.D.**, Respondent, licensed to practice medicine in New York state on December 15, 1998, by license number 212765, has been disciplined by a duly authorized professional disciplinary agency of another state, the Alabama State Board of Medical Examiners, Medical Licensure Commission of Alabama, (hereinafter "Alabama Board"), for acts which if committed in New York state would have constituted an imminent danger to the health of the people.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **MICHAEL ARTHUR SCHWARTZ, M.D.**, Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine. This order shall

remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 22nd day of January, 2004, at 10:00 am in the forenoon at Hedley Park Place, 5th Floor, 433 River Street, Troy, New York and at such other adjourned dates, times, and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing

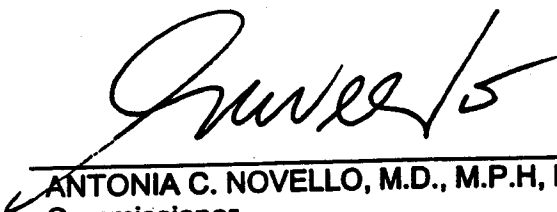
to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED, AND/OR THAT
YOU MAY BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE
URGED TO OBTAIN AN ATTORNEY FOR THIS
MATTER.**

DATED: Albany, New York

December 15, 2003


ANTONIA C. NOVELLO, M.D., M.P.H., Dr. P.H.,
Commissioner

Inquires should be addressed to:

**Robert Bogan
Associate Counsel
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
MICHAEL ARTHUR SCHWARTZ, M.D.
PM-02-11-5910-A

STATEMENT
OF
CHARGES

MICHAEL ARTHUR SCHWARTZ, M.D., the Respondent, was authorized to practice medicine in New York state on December 15, 1998, by the issuance of license number 212765 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 19, 2001, the Alabama State Board of Medical Examiners, Medical Licensure Commission of Alabama (hereinafter "Alabama Board"), by an Order (hereinafter "Alabama Order I"), directed Respondent to submit to a complete physical and comprehensive neuropsychological examination, including assessment of manual dexterity associated with possible rheumatoid arthritis and evaluation for chemical dependency, based on his refusal to accept a recommendation that he submit to random urine screens and that he be evaluated for possible impairment.

B. On or about September 5, 2002, the Alabama Board by an Order (hereinafter Alabama Order II"), indefinitely SUSPENDED Respondent's license to practice medicine and fined him \$5,000.00, based on immoral, unprofessional or dishonorable conduct and inability to practice medicine with reasonable skill and safety to patients by reason of excessive use of drugs, narcotics, alcohol, chemicals or other substance or as a result of physical condition.

C. The conduct resulting in the Alabama 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(7) (practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability);

3. New York Education Law §6530(8) (being a habitual abuser of alcohol, or being dependent on or a habitual abuser of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice);

4. New York Education Law §6530(15) (failing to comply with an order of the board);

5. New York Education Law §6530(20) (moral unfitness); and/or

6. New York Education Law §6530(21) (willfully making or filing a false report required by law or by the department of health or education department).

SPECIFICATION

FIRST SPECIFICATION

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

SECOND SPECIFICATION

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

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

DATED: *Dec -15*, 2003
Albany, New York


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