



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Public

November 1, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Denise Murphy, M.D.
85 Park Avenue
Apartment #40
Rochester, New York 14607

Denise Murphy, M.D.
P.O. Box 90426
Rochester, New York 14609

Catherine A. Gale, Esq.
Gale & Danks
P.O. Box 6527
Syracuse, New York 13217-6527

Robert Bogan, Esq.
NYS Department of Health
Hedley Building - 4th Floor
433 River Street
Troy, New York 12180

RE: In the Matter of Denise Murphy, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-239) 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), (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 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.

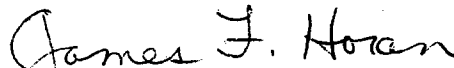
The notice of review served on the Administrative Review Board should be forwarded to:

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,



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
DENISE MURPHY, M.D.

DETERMINATION
AND
ORDER
BPMC #07-239

A hearing was held on October 17, 2007, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated August 9, 2007, were served upon the Respondent, **Denise Murphy, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Donald Cherr, M.D.**, Chairperson, **Gregory Fried, M.D.**, and **Mr. Robert M. Briber**, duly designated members of the State Board for Professional Medical Conduct ("the Board"), served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by Gale & Dancks, **Catherine A. Gale, 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.

BACKGROUND

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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Denise Murphy, M.D.
Gloria Baciewicz, 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. Denise Murphy, M.D., the Respondent, was authorized to practice medicine in New York State on October 12, 1994, by the issuance of license number 197423 by the New York State Education Department (Petitioner's Ex. 4).

2. On January 9, 2007, in the Monroe County Court, State of New York, the Respondent was found guilty, based on a plea of guilty, of Driving While Intoxicated, in

violation of New York Vehicle and Traffic Law Section 1192(3), a misdemeanor, and was sentenced to a one year operator's license revocation, three years probation, a requirement that she attend a Victim Impact Panel, and a fine and surcharges. (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

On January 9, 2007, the Respondent was convicted of Driving While Intoxicated. The date of her arrest for this crime was August 12, 2005. The Petitioner contended that this conviction justified the revocation of the Respondent's license to practice medicine. The Respondent argued that this was an unduly harsh penalty. This Hearing Committee concludes that the factors in support of revocation outweigh those in support of a lesser penalty.

The present proceeding is not the Respondent's first contact with the Board. The Respondent signed a Temporary Surrender of License and Registration (Petitioner Ex. 8), effective August 23, 1999, and has not practiced medicine since. In this surrender document, the Respondent stated, "I am at present incapacitated for the active practice of medicine due to substance abuse." On January 9, 2001, a professional medical conduct proceeding against the Respondent was settled by means of a Consent Agreement and Order (Petitioner's Ex. 7). In this document, the Respondent pleaded no contest to five instances of diverting to her own use Fentanyl that had been documented as administered to a surgery patient. On June 5, 2003, another professional medical

conduct proceeding against the Respondent was settled by means of a Consent Agreement and Order (Petitioner's Ex. 6). In this document, the Respondent stated that she did not contest the allegation that she had been convicted on November 13, 2001, of Driving While Intoxicated.

The Respondent argued that despite this history, her license should not be revoked because of the progress she had made over the last two years. She testified that her drinking and irresponsible behavior had been the result of uncontrolled bipolar disorder. She testified that all medications that had been prescribed prior to 2005 had been ineffective. However, in 2005 she started taking a new medication that enabled her to control the bipolar disorder and stop drinking, according to the Respondent's testimony. The Respondent testified that she has not had a drink since November of 2005. She stated that she attends Alcoholics Anonymous meetings almost every day, no longer has the desire to drink and has learned how to manage stress. The Respondent testified that it was her intention to regain her medical skills, perform a residency in a new specialty, and apply for the reinstatement of her license in approximately two years.

Gloria Baciewicz, M.D., a psychiatrist who has treated the Respondent since 1999, testified for the Respondent. Dr. Baciewicz corroborated the diagnosis of bipolar disorder and testified that the Respondent had made great progress since starting the new medication in 2005. She testified that the Respondent's current period of sobriety is much longer than any in the past and is a reason for optimism. Dr. Baciewicz testified that if the Respondent remains sober, she should be able to return to the practice of medicine.

The Respondent also introduced into evidence Respondent's Ex. A, a collection of letters attesting to the Respondent's sobriety, as proved by numerous negative urine tests

for alcohol, and to the Respondent's conscientious efforts to regain a responsible and productive life.

The Hearing Committee has given serious consideration to the Respondent's evidence, but the evidence against her was troubling enough to lead us to the conclusion that her license to practice medicine should be revoked. We are particularly concerned about the fact that the Respondent, after one Driving While Intoxicated conviction, committed this crime again. This is a crime that endangers the lives of innocent people. The Respondent, after her first conviction, may not have been able to stop drinking. However, she should have stopped putting herself in circumstances that would foreseeably result in driving after drinking. She did not take such precautions. Such disregard for the lives of others is intolerable in a physician.

This Hearing Committee also is concerned that the Respondent withdrew from the sobriety program of the Committee for Physicians' Health ("CPH"). The Respondent testified that she did so because she could not afford to pay for the urine tests that are part of the CPH program. She has been making a living cleaning houses in recent times and testified that this occupation did not provide her with enough money for the testing. The Respondent did not explain why, given her education, she could not have gotten a better paying job – the type of job that would have enabled her to stay in the vitally important CPH program.

The Hearing Committee also is concerned that the Respondent has made only a minimal effort to maintain her medical knowledge and skills. She has taken no continuing education courses in recent years. We understand that her financial situation precluded taking expensive courses, but she has made no effort to find inexpensive or free courses.

The Respondent argued that because her suspension from practice will continue indefinitely if her license is not revoked, there is no danger to the public from declining to

impose a revocation. She argued that because of this factor, there is no harm in allowing her to continue her progress toward being ready to resume her medical career. We understand and appreciate this argument, but we believe that it is outweighed by the need to make an important point about the danger and irresponsibility of her repeated instances of driving when she was intoxicated. This serious problem and the other problems described above lead us to the conclusion that a revocation of the Respondent's license is the only penalty sufficient in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Rochester, New York
30 October, 2007



Donald Cherr, M.D.
Chairperson

Gregory Fried, M.D.
Robert M. Briber

APPENDIX I



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

IN THE MATTER

NOTICE OF

OF

REFERRAL

DENISE MURPHY, M.D.
CO-06-03-1635-A

PROCEEDING

TO: DENISE MURPHY, M.D.
85 Park Avenue
Apt. #40
Rochester, NY 14607

DENISE MURPHY, M.D.
P.O. Box 90426
Rochester, NY 14609

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 19th day of September, 2007, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th 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

Aug 9, 2007


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
DENISE MURPHY, M.D.
CO-06-03-1635-A

STATEMENT
OF
CHARGES

DENISE MURPHY, Respondent, was authorized to practice medicine in New York state on October 12, 1994, by the issuance of license number 197423 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 9, 2007, in the Monroe County Court, State of New York, Respondent was found guilty, based on a plea of guilty, of Driving while intoxicated, in violation of New York Vehicle and Traffic Law, §1192.3, a misdemeanor, and was sentenced to a one (1) year operator's license revocation, three (3) years probation, a \$500.00 fine, a \$20.00 CVAF, a \$140.00 surcharge, and that she attend a Victim Impact Panel.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Aug. 9*, 2007
Albany, New York


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