



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

December 9, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Peter D. VanBuren, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

David Stewart Engelhardt, M.D.
577 Venice Lane
Siesta Key, Florida 34242

RE: In the Matter of David Stewart Engelhardt, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-294) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Handwritten signature of Tyrone T. Butler in black ink.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

**IN THE MATTER
OF
DAVID STEWART ENGELHARDT, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-98-294

A Commissioner's Order, Notice of Hearing dated September 2, 1998, and a Statement of Charges, dated September 1, 1998, were served upon the Respondent, David Stewart Engelhardt, M.D. **GEORGE C. SIMMONS, Ed.D. (Chair), JOSEPH G. CHANATRY, M.D. and JOHN H. MORTON, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter "Committee") in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Peter D. Van Buren, Esq. Deputy Counsel. The Respondent did not appear at the hearing either by counsel or in person. Evidence was received and witnesses 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

By an Order dated September 2, 1998, the Commissioner of Health summarily suspended the medical license of the Respondent, David Stewart Engelhardt, M.D., upon a finding that his continued practice of medicine would constitute an imminent danger to the health of the people of this state. More specifically, the accompanying Statement of Charges alleged eight specifications of professional misconduct, including allegations of the fraudulent practice of medicine, obtaining a license fraudulently, practicing while impaired, being a habitual user of alcohol, being convicted of a crime and being morally unfit to practice medicine. After a hearing on this matter, the Committee issued its Recommendation that the summary suspension of Respondent's license be maintained pending the ultimate resolution of the case. By an Order dated November 4, 1998, the Executive Deputy Commissioner ordered that the summary

suspension be continued.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all Findings and Conclusions herein are the unanimous determination of the Hearing Committee. Numbers in parentheses refer to transcript page numbers (T.) or exhibits (Ex.). These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. DAVID STEWART ENGELHARDT, M.D., (hereinafter " Respondent"), was authorized to practice medicine in New York State on July 23, 1985, by the issuance of license number 163399 by the New York State Education Department and is currently registered with the New York State Education Department to practice medicine for the period February 1, 1997, through January 1, 1999. (Pet. Ex.11)
2. On or about April 12, 1998, at approximately 7:00 a.m., the Respondent began working a shift in the Emergency Department, at Lourdes Hospital, Binghamton, New York. At 11:00 a.m. on that date, while still on duty as an Emergency Department physician at that facility, the Respondent's blood alcohol level was 0.034G/DL. (T. 27-28, 34, 41; Pet. Exs. 3 & 5)
3. From April 1990, the Respondent was enrolled in the program called the Committee for Physicians Health of the Medical Society of the State of New York (CPH) after being referred to CPH by the residency program because of suspected alcoholism until February

12, 1993, when he was referred for non-compliance. On or about April 13, 1998, the Respondent was again referred to CPH and was provided with recommendations which he did not follow. (T. 49; Pet. Exs. 9&10)

- 4 On or about April 20, 1984, Respondent was convicted of Driving While Intoxicated, in violation of §1192.3 of the Vehicle and Traffic Law of the State of New York, a misdemeanor, and received a fine and a surcharge of \$500 in the Mayfield Town Court, County of Fulton, State of New York. (Pet. Ex. 13)

5. On or about April 17, 1985, the Respondent completed an application for licensure and first registration which he filed with the University of the State of New York, State Education Department, seeking a license as a physician in the State of New York in which he answered "No" by checking the no box to question #9:

"Have you ever been convicted of a crime, felony or misdemeanor?"

(Pet. Ex. 11)

6. On or about January 25, 1981, the Respondent was charged with violating §1192.3 of the Vehicle and Traffic Law of the State of New York, a misdemeanor. As a result of that charge, on or about August 6, 1981, Respondent was convicted of operating a motor vehicle while impaired by alcohol, an infraction, upon verdict after trial, in the District Court of the County of Suffolk, New York. He was sentenced to a fine of \$50.00 or 5 days in County Jail. Respondent paid the fine. (Pet. Ex. 14)

7. On or about June 2, 1997, Respondent filed an Application for Medical Staff Appointment at the Lourdes Hospital, Binghamton, New York, in which, when asked to indicate whether he had any history of alcohol abuse he answered in the

negative, and he answered "No" by checking the no box to question #2:

"Have any misdemeanor or felony charges been brought against you?"

8. On or about May 19, 1997, the State of Florida Board of Medicine, denied Respondent's Application for Licensure by endorsement in the State of Florida. The State Board adopted the Findings of Fact set forth in a Recommended Order. The Hearing Officer, in the Recommended Order, found that Respondent's own admission and other proof established that Respondent misrepresented or concealed material facts in the Application process and supported a Determination that he is not entitled to a licensure in the State of Florida on the basis of the application. The Hearing Officer further found that Respondent's admission of intentional omission of information from the Florida application because it "looked bad" demonstrated that he lacked the ability to be accurate and truthful, an integral ingredient to being able to practice medicine with skill and safety. (Pet.Ex. 12)

Conclusions

The following conclusions were made pursuant to the Findings of Fact listed above. The Hearing Committee concluded that the following Factual Allegations were proven by a preponderance of the evidence (the paragraphs noted refer to those set forth in the Statement of Charges, Factual Allegations). The citations in parentheses refer to the Findings of Fact (supra), which support each Factual Allegation:

Paragraph A.: (2)

Paragraph B.: (3);

Paragraph C.: (5);

Paragraph D.: (7);

Paragraph E.: (7);

Paragraph F.: (8);

Paragraph G.: (4);

Paragraph H.: (6)

The Hearing Committee further concluded that the following Specifications should **be sustained**.

The citations in parentheses refer to the Factual Allegations from the Statement of Charges, which support each specification:

.OBTAINING LICENSE FRAUDULENTLY

FIRST SPECIFICATION: (Paragraph C.)

FRAUDULENT PRACTICE

SECOND SPECIFICATION: (Paragraphs C., D., E. and F.)

PRACTICING WHILE IMPAIRED

THIRD SPECIFICATION: (Paragraph A.)

BEING HABITUAL USER OF ALCOHOL

FOURTH SPECIFICATION: (Paragraphs A., B., G. and H.)

BEING CONVICTED OF A CRIME

FIFTH SPECIFICATION: (Paragraph G.)

CONDUCT EVIDENCING MORAL UNFITNESS

SIXTH SPECIFICATION: (Paragraphs C., D., E. and F.)

HAVING HIS APPLICATION FOR A LICENSE REFUSED

SEVENTH SPECIFICATION: (Paragraph F.)

NEGLIGENCE ON MORE THAN ONE OCCASION

EIGHTH SPECIFICATION: (Paragraph A.)

DISCUSSION

Respondent was charged with eight specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of conduct which constitute professional misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for the fraudulent practice of medicine, gross negligence, negligence, gross incompetence and incompetence in the practice of medicine.

The following definition was utilized by the Committee during its deliberations:

Negligence is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

Fraudulent Practice of the Profession is an intentional misrepresentation or concealment of a know fact. An individual's knowledge that he/she is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts.

As noted above the Respondent did not appear in person nor was he represented at the

hearing. No evidence was presented to refute any of that presented by the Petitioner. The Petitioner presented expert testimony with respect to the charges relating to his practicing medicine with a blood alcohol level of .034 and his denial of and his refusal to get help for his substance abuse problem. The Committee concluded that this testimony clearly established the Respondent's actions constituted misconduct as set forth in the second, third, fourth, sixth and eighth specification. The Committee also concluded that the Petitioner sustained its burden of proof with respect to the other charges relating to the Respondent providing untruthful answers on licensing and privileges applications and having a license denied by another jurisdiction. The documentary evidence presented was unambiguous and uncontradicted.

The Committee determined that Respondent exhibited a recalcitrant attitude throughout this whole process. He has failed to cooperate with the Board and with those who have offered services throughout his medical career to help him overcome his substance abuse condition. The Respondent made himself unavailable for any discussion of this matter and has continued to refuse to recognize his problem thus precluding obtaining treatment. This was clearly shown by his letter responding to the his blood alcohol tests.

DETERMINATION AS TO PENALTY

The Committee, pursuant to the Findings of Fact and Conclusions set forth above, unanimously determined that Respondent's license to practice medicine in New York State should **be revoked**. 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 record in this case clearly established that Respondent has a substance abuse problem and was practicing while his judgement was impaired. By doing so, he put his patients at risk.

Respondent demonstrated negligence on more than one occasion, fraudulent conduct and moral unfitness in the practice of medicine.

Any individual who receives a license to practice medicine is placed into a position of public trust. Respondent essentially forfeited his right to that public trust by his conduct. Respondent abdicated his responsibility to exercise his skill and judgment for the benefit of his patients.

The Committee unanimously determined that no sanction short of revocation would adequately protect the public.

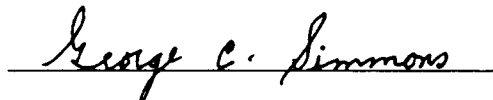
ORDER

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

1. The First through Eighth Specifications of professional misconduct, as set forth in the Statement of Charges (Appendix I) are **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: Rochester, New York

10/7, 1998



GEORGE C. SIMMONS, Ed.D. (Chair)
JOSEPH G. CHANATRY, M.D.
JOHN H. MORTON, M.D.



TO:
Peter D. Van Buren, Esq.
Deputy Counsel
New York State Department of Health
E.S.P. - Corning Tower
25th Floor
Albany, New York 12237-0032

David Stewart Engelhardt, M.D.
577 Venice Lane
Siesta Key, Florida 34242

APPENDIX I

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

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IN THE MATTER : STATEMENT
OF : OF
DAVID STEWART ENGELHARDT, M.D. : CHARGES

-----X

DAVID STEWART ENGELHARDT, M.D., the Respondent, was authorized to practice medicine in New York State on July 22, 1985 by the issuance of license number 163399 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine with a registration address of 577 Venice Lane, Siesta Key, Florida 34242.

FACTUAL ALLEGATIONS

A. On or about April 12, 1998, Respondent was practicing medicine in the Emergency Department at Lourdes Hospital, Binghamton, New York with a blood alcohol level found to be 0.034G/DL at 11:00 a.m. Four patients had been seen by the Respondent during this shift which began at 7:00 a.m.

B. Respondent was enrolled in the Committee for Physicians Health of the Medical Society of the State of New York from April 1990 when he was referred by his residency program for concern over alcoholism until February 12, 1993 when he was referred for non-compliance. He was again referred to the Committee for

Physicians Health by Lourdes Hospital on April 13, 1998.

Respondent was contacted with recommendations by the Committee on Physician's Health but has not followed their recommendations.

C. On or about April 17, 1985, the Respondent completed an application for licensure and first registration which he filed with the University of the State of New York, State Education Department, seeking a license as a physician in the State of New York in which he answered "No" by checking the no box to question #9.

"Have you ever been convicted of a crime, felony or misdemeanor?"

In fact, Respondent had been found guilty of a misdemeanor.

D. On or about June 23, 1997, Respondent filed an Application for Medical Staff Appointment at the Lourdes Hospital, Binghamton, New York, in which he intentionally and falsely answered "No" by checking the no box to question #2:

"Have any misdemeanor or felony charges been brought against you?"

In fact, Respondent had been found guilty of a misdemeanor on one occasion and had been charged with a misdemeanor, but convicted of an infraction, on another occasion.

E. On or about June 23, 1997, Respondent submitted an Application for Medical Staff Appointment to the Lourdes Hospital, Binghamton, New York, in which he denied any history of alcohol or substance abuse when such was not true.

F. On or about May 19, 1997, the State of Florida Board of Medicine, in DOAH Case No. 95-1719, denied Respondent's Application for Licensure by endorsement in the State of Florida. In so doing, the State Board adopted the Findings of Fact set forth in a Recommended Order in case 95-1719, entered on the 19th day of August, 1996. The Hearing Officer, in the Recommended Order, Paragraph 20, found that Respondent's own admission and other proof established that Respondent misrepresented or concealed material facts in the Application process and supported a Determination that he is not entitled to a licensure in the State of Florida on the basis of the application. The Hearing Officer further found, in Paragraph 19, that Respondent's admission of intentional omission of information from the Florida application because it "looked bad" demonstrated that he lacked the ability to be accurate and truthful, an integral ingredient to being able to practice medicine with skill and safety. The conduct found by the State of Florida would, if committed in New York State, constitute professional misconduct under New York Education Law §§6530(2) and/or (20), practicing fraudulently and/or moral unfitness.

G. On or about April 20, 1984, Respondent was convicted of Driving While Intoxicated in violation of §1192-3 of the Vehicle and Traffic Law of the State of New York, a misdemeanor, and received a fine and a surcharge of \$500 in the Mayfield Town Court, County of Fulton, State of New York.

H. On or about August 6, 1981, Respondent was convicted of

operating a motor vehicle while impaired by alcohol, an infraction, upon verdict after trial, in the District Court of the County of Suffolk, New York. He was sentenced to a fine of \$50.00 or 5 days in County Jail. Respondent paid the fine.

FIRST SPECIFICATION
OBTAINING LICENSE FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(1) by reason of his obtaining the license fraudulently in that the Petitioner charges:

1. The facts in Paragraph C.

SECOND SPECIFICATION
FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(2) by reason of his practicing the profession of medicine fraudulently in that Petitioner charges:

2. The facts in Paragraphs C, D, E, and/or F.

THIRD SPECIFICATION
PRACTICING WHILE IMPAIRED

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(7) by

reason of his practicing the profession while impaired by alcohol and/or mental disability in that Petitioner charges:

3. The facts in Paragraph A.

FOURTH SPECIFICATION
BEING HABITUAL USER OF ALCOHOL

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(8) by reason of his being a habitual user of alcohol in that Petitioner charges:

4. The facts in Paragraphs A, B, G, and/or H.

FIFTH SPECIFICATION
BEING CONVICTED OF A CRIME

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(9)(a)(i) by reason of his being convicted of committing an act constituting a crime under New York State Law, in that Petitioner charges:

5. The facts in Paragraph G.

SIXTH SPECIFICATION
CONDUCT EVIDENCING MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(20) by reason of his conduct in the practice of medicine which evidences

moral unfitness to practice medicine, in that Petitioner Charges:

6. The facts in Paragraphs C, D, E and/or F.

SEVENTH SPECIFICATION

HAVING HIS APPLICATION FOR A LICENSE REFUSED

Respondent is charged with committing professional misconduct as defined by New York Educ. Law §6530(9)(d) by reason of his having his application for a license refused by a duly authorized disciplinary agency of another state, where the conduct resulting in refusal of an application for a license would if committed in New York State constitute professional misconduct under the laws of New York State in that Petitioner charges:

7. The facts in Paragraph F.

EIGHTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(3) by reason of his practicing with negligence on more than one occasion, in that Petitioner charges:

8. The facts in Paragraph A.

DATED: *September 1,* 1998
Albany, New York

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