

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

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IN THE MATTER : COMMISSIONER'S
OF : ORDER AND
DAVID STEWART ENGELHARDT, M.D. : NOTICE OF HEARING

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

The undersigned, Barbara A. DeBuono, M.D., M.P.H., as 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 the continued practice of medicine in the State of New York by DAVID STEWART ENGELHARDT, M.D., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law Section 230(12), that effective immediately DAVID STEWART ENGELHARDT, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. 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 for Professional Medical Conduct on the 10th day of September, 1998 at 10:00 o'clock in the morning at The Hampton Inn, 417 7th North Street, Liverpool, New York 13088 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, which 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 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 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 TO REPRESENT
YOU IN THIS MATTER.

DATED: Albany, New York

2 September, 1998


BARBARA A. DeBUONO, MD, MPH
Commissioner of Health

Inquiries should be directed to:

Peter D. Van Buren
Deputy Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2509
Empire State Plaza

Albany, New York 12237-0032
(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
DAVID STEWART ENGELHARDT, M.D. : CHARGES

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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