



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

September 22, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph Huberty, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2429
Albany, New York 12237

Francis E. Healy, M.D.
593-5 Blue Spruce
Santa Claus, IN 47579

Francis E. Healy, M.D.
PO Box 593
Santa Claus, In 47549

Francis E. Healy, M.D.
562 Vaughn Drive
Satsuma, Al 36572

RE: In the Matter of Francis E. Healy, M.D.

Dear Mr. Huberty and Dr. Healy:

Enclosed please find the Determination and Order (No. BPMC-93-143) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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 all action 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.

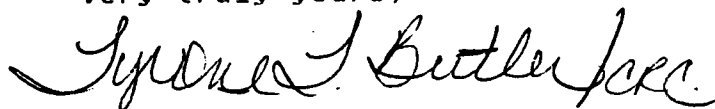
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

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IN THE MATTER
OF
FRANCIS E. HEALY, M.D.

: DETERMINATION
: AND
: ORDER
: OF THE
: HEARING COMMITTEE
: ORDER NO.
: BPMC-93-143

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A Notice of Hearing and Statement of Charges dated May 24, 1993 were served upon FRANCIS E. HEALY, M.D. (hereinafter referred to as "Respondent"). The undersigned Hearing Committee consisting of ROBERT M. KOHN, M.D., CHAIRPERSON, DAVID T. LYON, M.D. AND IRVING S. CAPIAN, was duly designated and appointed by the State Board for Professional Medical Conduct. JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as Administrative Officer.

A hearing was conducted on July 28, 1993 pursuant to section 230 (10)(e) of the Public Health Law and sections 301-307 and 401 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of section 6530 of the New York Education Law by Respondent. The hearing was at the Offices of the New York State Department of Health, Corning Tower, Albany, New York.

The Department of Health appeared by Joseph Huberty, Esq., of counsel to Peter J. Millock, Esq., General Counsel. Respondent neither appeared in person nor by counsel. Evidence was received and a transcript of this proceeding was made.

STATEMENT OF CASE

The proceeding was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of New York 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 the expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon a licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to New York Education Law Section 6530(9)(d) in that he had voluntarily or otherwise surrendered his license after a disciplinary action was instituted by the duly authorized professional disciplinary agency of another state where the conduct resulting in the surrender would, if committed in New York State, constitute professional misconduct under the laws of New York State. The charges are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges which is attached to this Determination and Order (Appendix I).

SIGNIFICANT LEGAL RULINGS

The Administrative Law Judge found that the State had made service upon Respondent pursuant to statute and that

therefore, jurisdiction of Respondent had been established.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. The 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 the cited evidence.

1. Respondent was authorized to practice medicine in New York State on January 27, 1986 by the issuance of license number 165272 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. Respondent's last registered address with the New York Education Department is 562 Vaughn, Drive, North Satsuma, Alabama, 36572.

2. The Medical Licensing Board of the State of Indiana, on September 29, 1992, issued an Order acting upon the Verified Petition to Surrender License submitted by Francis E. Healy, M.D. and filed with the Board on September 24, 1992. The Board accepted Respondent's surrender of his physician's license on the following terms:

- "a. That the surrender of Indiana physician's license No. 01035434 by Respondent is a knowing, intentional, voluntary and permanent surrender of his license to practice medicine in the State of Indiana.

- b. That Respondent is aware and understands that this surrender of his Indiana license to practice medicine is a permanent and final act which deprives Respondent of all privileges of licensure in Indiana and is not subject to reconsideration or judicial review; and
- c. That Respondent is aware and understands that he is entitled to full evidentiary hearing before the Board regarding any charges which would have been filed against Respondent for violations of IC 25-1-9-4 and knowingly, voluntarily and intentionally waives this right by the permanent surrender of license No. 01035434 in lieu of further disciplinary proceedings."

3. On or about the 1st day of June 1992, the Medical licensing Board of the State of Indiana summarily suspended the physician's license held by Francis E. Healy, M.D., and ordered him to immediately cease all acts constituting the practice of medicine for a period of 90 days from the date of the Order. In this Order, the Board required that Respondent undergo a complete addictionology examination because his physical and mental capacity to practice safely was at issue.

CONCLUSIONS

The Committee finds that the State has met its burden of proof in this matter. The State has established that the State of Indiana summarily suspended Respondent's license to practice medicine. The State has also shown that the conduct which resulted in the action against Respondent's license, if committed in New York State, would constitute professional misconduct under the laws of New York State. Had Respondent committed the acts complained of in Indiana, in this State, he would be guilty of professional misconduct by reason of practicing the profession

while impaired by alcohol, drugs, physical disability or mental disability within the meaning of N.Y. Education Law Section 6530(7) and/or being a habitual user of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects within the meaning of N.Y. Education Law Section 6530(8).

The Committee further finds that Respondent surrendered his license in Indiana after that state instituted disciplinary action against him. The surrender of a medical license after disciplinary proceedings are brought by another jurisdiction, for allegations that would constitute medical misconduct in New York State, constitutes a violation of Section 6530(9)(d) of the Education Law and hence is medical misconduct in this state. Accordingly, the specification in this matter is sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions set forth above, finds that Respondent has committed professional misconduct in New York State. Respondent has chosen not to appear in this proceeding. The State of Indiana has revoked his license to practice medicine and Respondent has offered no reason to find otherwise.

ORDER

Based upon the foregoing it is hereby ordered that:

1. The specifications of professional misconduct contained in the Statement of Charges in this matter be

SUSTAINED; and

2. The license of Respondent, to practice medicine in
New York State shall be Revoked.

DATED: Buffalo, New York

Sept 20, 1993



ROBERT M. KOHN, M.D.
Chairperson

DAVID T. LYON, M.D.
IRVING S. CAPLAN

**TO: Joseph Huberty, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Albany, New York**

**Francis E. Healy, M.D.
P.O. Box 593
Santa Claus, In. 47579**

**Francis E. Healy, M.D.
593-5 Blue Spruce
Santa Claus, In. 47579**

**Francis E. Healy, M.D.
562 Vaughn Drive
Satsuma, Al. 36572**

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

-----X
IN THE MATTER :
OF :
FRANCIS E. HEALY :
-----X
NOTICE OF
REFERRAL
PROCEEDING

TO: FRANCIS E. HEALY
562 Vaughn Drive
Satsuma, AL 36572

P.O. Box 593
Santa Claus, Indiana, 47579

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 28th day of July, 1993 at 2:15 o'clock in the afternoon of that day at Corning Tower, Room 2509, Empire State Plaza, Albany, NY 12237.

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 Larry Storch, Administrative Law Judge, New York State Department of Health, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, as well as the Department of Health attorney indicated below, on or before July 19, 1993.

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with Judge Storch at the address indicated above on or before July 19, 1993 and a copy of all papers must be

served on the same date on the Department of Health attorney indicated below. 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 proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Judge Storch 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
May 24, 1993



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

Inquiries should be addressed to:
JOSEPH HUBERTY
Assistant Attorney
Division of Legal Affairs
Bureau of Professional Medical Conduct
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability
Definitions
Notice of Hearing
Adjournment
Answer or Responsive Pleading
Amendment of Pleadings
Service of Papers
Discovery
Hearing Officer/Pre-Hearing Conference
Pre-Hearing Conference
Stipulations and Consent Orders
The Hearing
Hearing Officer's Report
Final Determination and Order
Waiver of Rules

The exact wording of the rules is found at 10 NYCRR Part 51 of Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as follows:

51.1: Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.

2. "CPLR" means Civil Practice Law and Rules.

3. "Department" means New York State Department of Health.

4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.

5. "Party" means all persons designated as petitioner, respondent or intervenor.

6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and recommendations of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment, and only after he/she has consulted with both parties.

51.5 Answer to Responsive Pleading. A party may serve a response to the allegations of the Department.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, documents, or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and responses to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent Orders. At any time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity

of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public Health Law §230 may not be introduced into evidence by either party and their production cannot be required by Hearing Officer.

51.12 Hearing Officer's Report. The Hearing Officer, within 60 days of the completion of the hearing, should submit a report.


51.13 Final Determination and Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board or council. The order should state a basis for the decision. Each party receives a copy of the executed order.

51.14 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

51.15 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

DATED: Albany, New York

1989


PETER J. MILLOCK
General Counsel

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

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IN THE MATTER : STATEMENT
OF : OF
FRANCIS E. HEALY, M.D. : CHARGES

-----X

FRANCIS E. HEALY, M.D., the Respondent, was authorized to practice medicine in New York State on January 27, 1986 by the issuance of license number 165272 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York State. His last registered address with the New York Education Department is 562 Vaughn, Drive N., Satsuma, Al 36572.

FACTUAL ALLEGATIONS

A. The Medical Licensing Board of the State of Indiana, on September 29, 1992, issued an Order acting upon upon the Verified Petition to Surrender License submitted by Francis E. Healy, M.D. and filed with the Board on September 24, 1992. The Board accepted Respondent's surrender of his physician's license on the following terms:

"1. That the surrender of Indiana physician's license No. 01035434 by Respondent is a knowing, intentional, voluntary and permanent surrender of his license to practice medicine in the State of Indiana.

2. That Respondent is aware and understands that this surrender of his Indiana license to practice medicine is a permanent and final act which deprives Respondent of all privileges of licensure in Indiana and is not subject to reconsideration or judicial review; and

3. That Respondent is aware and understands that he is entitled to full evidentiary hearing before the Board regarding any charges which would have been filed against Respondent for violations of IC 25-1-9-4 and knowingly, voluntarily and intentionally waives this right by the permanent surrender of license § 01035434 in lieu of further disciplinary proceedings."

B. On or about the 1st day of June 1992, the Medical Licensing Board of the State of Indiana summarily suspended the physician's license held by Francis E. Healy, M.D., and ordered him to immediately cease all acts constituting the practice of medicine for a period of 90 days from the date of the Order. In this Order, the Board required that Respondent undergo a complete addictionology examination because his physical and mental capacity to practice safely was at issue. The conduct resulting in this action against Respondent's license in Indiana, if committed in New York State, would constitute professional misconduct under the laws of New York State by reason of practicing the profession while impaired by alcohol, drugs, physical disability or mental disability within the meaning of N.Y. Educ. Law Section 6530(7) (McKinney's Supp. 1993) and/or being a habitual user of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar

effects within the meaning of N.Y. Educ. Law Section 6530(8) (McKinney's Supp. 1993).


SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(d) (McKinney's Supp. 1993) in that he had voluntarily or otherwise surrendered his license after a disciplinary action was instituted by the duly authorized professional disciplinary agency of another state where the conduct resulting in the surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts of paragraphs A, and/or B.

DATED: Albany, New York

May 24, 1993



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