



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Lorna McBarnette
Executive Deputy Commissioner

January 31, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hubert Honer, M.D.
P.O. Box 811253
Boca Raton, Florida 33481

Effective Date: 1/31/92

Terrence Sheehan, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Hubert Honer, M.D.

Dear Dr. Honer and Mr. Sheehan:

Enclosed please find the Determination and Order of the Hearing Committee in the above referenced matter.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (i), §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.

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 of the Hearing Committee's Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to the New York State Department of Health, Bureau of Adjudication, Corning Tower - Room 2503, Empire State Plaza, Albany, New York 12237-0030, Attention: James F. Horan, Esq., Administrative Law Judge. The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. The stipulated record in this matter shall consist of the official hearing transcript and all documents in evidence. 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.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Very truly yours,

Tyrone T. Butler, nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:
Enclosure

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

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IN THE MATTER : DETERMINATION
OF :
HUBERT HONER, M.D. : ORDER
-----X #BPMC 92-11

A Notice of Hearing and Statement of Charges, both dated November 7, 1991, were served upon the Respondent, Hubert Honer, M.D. THOMAS L. HAWKINS, JR., M.D., STANLEY L. GROSSMAN, M.D., and OLIVE M. JACOB, 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. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. A hearing was held on December 18, 1991. The Department of Health appeared by Terrence Sheehan, Esq., Associate Counsel. The Respondent did not appear at the hearing in person, and no attorney appeared on behalf of Respondent. 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

This case was brought pursuant to Public Health Law § 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law § 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b).

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. These 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 by the issuance of license number 133477 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department. (Not Contested).

2. On or about May 25, 1989, the Florida Department of Professional Regulation issued an Order of Emergency Suspension of Respondent's license to practice medicine in the State of Florida, pursuant to Florida Statutes §455.255(7). The Department of Professional Regulation found, inter alia, that since at least on or about May 9, 1989 Respondent had been unable to practice medicine with reasonable skill and safety to his patients because of a cocaine dependency and the use of alcohol. (Pet. Exhibit

#6).

3. In a Stipulation dated January 5, 1990, Respondent admitted violations of Section 458 of the Florida Statutes in that Respondent was unable to practice medicine with reasonable skill and safety to patients by reason of his use of alcohol and cocaine. (Pet. Exhibit #6).

4. On or about February 12, 1990, the Florida Board of Medicine (hereinafter "Board") issued a Final Order which, inter alia, accepted the Stipulation, suspended Respondent's license to practice medicine in Florida for a minimum of one year, mandated permanent participation in a physician drug abuse recovery program and fined him \$5,000 to payable if and when his license to practice medicine is restored. (Pet. Exhibit #6).

5. At all times relevant to these proceedings, Florida Statutes §458.331(1)(s) provided that "...Being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material..." constituted grounds for disciplinary action. (Pet. Exhibit #7).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. all conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates that Respondent was disciplined by the Florida Board of Medicine

for conduct in violation of Fla. Stat. §458.331(s). This statute defines the inability to practice medicine with reasonable skill and safety to patients by reason of the use of alcohol, drugs, narcotics, chemicals, or any other type of material as grounds for action against a medical licensee.

Education Law §6530(8), as added by Ch. 606, laws of 1991, defines professional misconduct as:

Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regimen which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice.

The record demonstrates that Respondent's medical license was suspended by the Florida Board in 1990, after admitting to habitual use of alcohol and cocaine.

The Hearing Committee concluded that Respondent's conduct would clearly constitute a violation of Education Law §6530(8) were it to have occurred in New York State. As a result, the Committee unanimously voted to sustain the specification of misconduct alleged by the Department.

DETERMINATION AS TO PENALTY

The Hearing Committee unanimously concluded that Respondent's license to practice medicine in New York State should be revoked. A mere suspension of Respondent's license, with terms of probation would be unworkable, as the Respondent does not currently live or practice within New York State, and his compliance with the terms of probation could not be monitored by

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

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the Office of Professional Medical Conduct. In the event that Respondent ever decides that he wishes to regain his New York medical license, he may petition the Board of Regents for reinstatement. At that time, he will have an opportunity to demonstrate that he is no longer an habitual user of alcohol or drugs.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and

2. Respondent's license to practice medicine in the State of New York is **REVOKED**.

DATED: Albany, New York
, 1992


THOMAS L. HAWKINS, JR., M.D.

Stanley L. Grossman, M.D.
Olive M. Jacob

TO: Hubert Honer, M.D.
P.O. Box 811253
Boca Raton, FL 33481

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Associate Counsel
New York State Department of Health
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