



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

January 8, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.
NYS Department of Health
5 Penn Plaza Sixth Floor
New York, New York 10001

Joel Winograd, Esq.
110 East 59th Street
New York, New York 10022

Oliver Hyder, M.D.
14 Locust Hill Drive
Darien, CT 06820

RE: In the Matter of Oliver Hyder, M.D.

Dear Ms. Abeloff, Mr. Winograd and Dr. Hyder:

Enclosed please find the Determination and Order (No. 97-10) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

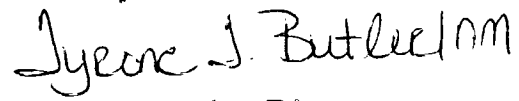
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler" followed by a stylized monogram "TBM".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

CCNY

IN THE MATTER
-OF-
OLIVER HYDER, M.D.

Respondent

DETERMINATION

AND

ORDER

BPMC-97-10

A Notice of Referral Proceeding and Statement of Charges, dated October 9, 1996, were served upon the Respondent, Oliver Hyder, M.D. **JERRY WAISMAN, M.D. (Chair), RANDALL GRIEPP, M.D. and GEORGE SIMMONS, Ed.D.** 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. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Dianne Abeloff, Associate Counsel. The Respondent appeared in person and was represented by Winograd & Winograd, Joel Winograd, Esq. of Counsel. Evidence was received, statements were 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 Section 230(10)(p). This statute provides for an expedited proceeding where 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 prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding 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) (found guilty of misconduct by another state). The charges herein arise from the State of Connecticut, Department of Public Health, Bureau of Health System Regulation, Division of Medical Quality Assurance (hereinafter State of Connecticut) issuing a Consent Order. The Consent imposed a civil penalty of \$3,000.00 on the Respondent, suspended his license for 30 days and placed his license on probation for 4 years. The Consent Order was the result of allegations brought by the State of Connecticut that the Respondent prescribed controlled substances for a fee for persons with whom he had no physician relationship and that he failed to keep adequate records. The allegations in this proceeding are more particularly set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix One.

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 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. Oliver Hyder, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on October 15, 1965, by the issuance of license number 095693 by the New York State Education Department. (Pet. Exs. 1&2).

2. On or about January 16, 1996, the State of Connecticut accepted a Consent Order executed by the Respondent and the State of Connecticut. The Consent Order found that the Respondent had prescribed controlled substances for a fee for persons with whom he had no physician relationship, that he failed to keep adequate records and such conduct constituted a violation of Connecticut General Statutes. (Pet. Ex. 3)

3. The Respondent was ordered to pay a \$3,000.00 civil penalty, had his license to practice medicine suspended for 30 days and had his license to practice medicine placed on probation for 4 years by the State of Connecticut. (Pet. Ex. 3)

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 Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was both found guilty of professional misconduct by a professional disciplinary agency of another state. The underlying conduct which was the basis for the finding by the State of Connecticut would constitute professional misconduct in New York. Specifically, the Hearing Committee found the Respondent's actions would fall within the definitions of misconduct set forth at N.Y. Education Law §6530(2) (Practicing the profession fraudulently), N.Y. Education Law §6530(3) (Practicing the profession with negligence on more than one occasion) and N.Y. Education Law §6530(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be **placed on probation**. 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 Hearing Committee based its determination on its belief that the disciplinary action taken by the State of Connecticut was commensurate with the degree of misconduct in this case. Additionally the Respondent presented evidence that he no

longer has the ability to prescribe controlled substances and that he is in compliance with the terms of the Connecticut probation. In light of these factors the Hearing Committee believes placing the Respondent's license on probation will adequately protect the consumers of medical services of this state.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is placed on **PROBATION**, the terms of which are set forth in APPENDIX II attached hereto and made a part hereof.

DATED: New York, New York

1/6, 199*6*

Jerry Waismant, M.D.

JERRY WAISMAN, M.D. (CHAIR)

Randall Griep, M.D.

George Simmons, Ed.D.

PH

TO: Dianne Abeloff, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Joel Winograd, Esq.
110 East 59th Street
New York, New York 10022

Oliver Hyder, M.D.
14 Locust Hill Drive
Darien, CT 06820

APPENDIX I

IN THE MATTER
OF
OLIVER HYDER, M.D.

STATEMENT
OF
CHARGES

OLIVER HYDER, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 15, 1965, by the issuance of license number 095693 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about January 16, 1996, the Connecticut Department of Public Health, Bureau of Health System Regulation, Division of Medical Quality Assurance, found that Respondent prescribed controlled substances for a fee to several persons with whom he had no bonafide physician relationship, and without performing physical examinations; and, he failed to maintain and keep adequate patient records. The Connecticut Department of Health ordered Respondent's license to practice medicine suspended for a period 30 days and for the following four years Respondent's license shall be placed on probation. Respondent was also ordered to pay a fine of \$3,000.00

SPECIFICATION OF CHARGES

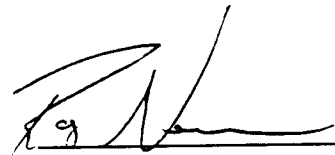
SPECIFICATION

HAVING BEEN FOUND GUILTY OF
PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1996) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530 (2), practicing fraudulently, §6530 (3), practicing with negligence on more than one occasion, and §6530 (32), failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient) as alleged in the facts of the following:

1. Paragraph A.

DATED: October 9, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

TERMS AND CONDITIONS OF PROBATION

The Respondent's license to practice medicine in New York is placed on probation for a period which will coincide with the probationary time period imposed on the Respondent's license to practice medicine by the State of Connecticut and will end when said Connecticut probation ends. Upon commencement of the probationary period the following conditions shall be in effect:

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent shall submit prompt (within 20 days) written notification to the Board, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. During the period of probation, the Director of the Office of Professional Medical Conduct or designee, may review the professional performance of the Respondent. This review may include but not be limited to a random selection of the office records, patient records or hospital charts, interviews with or periodic visits with the Respondent and his/her staff at the practice location(s) or one of the offices of the Office of Professional medical Conduct, Hedley Park Place, 433 River Street, 4th Floor, Troy, New York 12180.
5. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.
6. Respondent shall comply fully with all the terms and conditions imposed upon his license to practice medicine by the Consent Order entered into between the Respondent and the State of Connecticut on January 16, 1996. In conjunction therewith, Respondent shall forward to the Director, OPMC, at the address listed

above, all reports of any psychiatric or other evaluation submitted to the State of Connecticut pursuant to the Consent Order.

7. Respondent's practice of medicine with respect to those patients within New York, shall be monitored by a physician monitor, board certified in an appropriate specialty, ("Practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct or designee. The Practice Monitor shall not be an employee of or be affiliated with Respondent's employer. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of a proposed practice monitor will be determined to be a violation of probation.
 - a. The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or designee, on a schedule to be determined by the office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis at least quarterly and shall examine a random (no less than 15) selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall immediately be reported to the Office of Professional Medical Conduct by the monitor.
 - b. Any change in practice monitor must be approved in writing, in advance, by the Office of Professional Medical Conduct.
 - c. All expenses associated with monitoring, including fees to the monitoring physician, shall be the sole responsibility of the Respondent.
 - d. It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.
 - e. Respondent must maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director or designee prior to the placement of a practice monitor.