



**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 19, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Tone Johnson, Jr., M.D.
7029 Brandon Street
Corpus Christi, TX 78413

Tone Johnson, Jr., M.D.
3138 South Alameda
Suite A
Corpus Christi, TX 78404

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – Fourth Floor
Troy, New York 12180

Paul R. Maher, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – Fourth Floor
Troy, New York 12180

RE: In the Matter Tone Johnson, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-289) 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.

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.

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 cursive script that reads "Tyrone T. Butler". The signature is written in black ink and is positioned above the typed name of the signatory.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

DETERMINATION

AND

ORDER

BPMC-99-289

COPY

IN THE MATTER

OF

TONE JOHNSON, JR., M.D.

A Notice of Referral Proceedings and Statement of Charges, both dated, July 8, 1999, were served upon the Respondent, **TONE JOHNSON, JR., M.D.**

TERESA BRIGGS, M.D., Chairperson, **STEVEN LAPIDUS, M.D.** and **SR. MARY THERESA MURPHY**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 28, 1999, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL R. MAHER, ESQ.**, of Counsel. The Respondent appeared on his own behalf.

Evidence was received 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). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such case, 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner: None

For the Respondent: 1. Tone Johnson Jr., M.D., the Respondent
 2. Geraldine Johnson, the Respondent's wife

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **TONE JOHNSON, JR., M.D.**, the Respondent, was authorized to practice medicine in New York state on April 16, 1982, by the issuance of license number 149548 by the New York State Education Department (Pet's. Ex. 3)

2. On April 10, 1999, the Texas State Board of Medical Examiners, (hereinafter "Texas Board"), issued an Agreed Order, (hereinafter "Texas Order"), that constituted a Public Reprimand of the Respondent based upon violations of improper management of a Methadone treatment center of which the Respondent owned 55% and was the medical director and program sponsor. (Pet's. Ex. 4)

HEARING COMMITTEE CONCLUSION

The Hearing Committee concludes that the conduct which resulted in the Texas Board's disciplinary action against the Respondent would if committed in New York, constitute misconduct under the laws of New York state.

VOTE OF THE HEARING COMMITTEE
All vote were unanimous unless otherwise specified

***FIRST SPECIFICAITONS**

The Respondent violated New York Education Law §6530(9)(b) by reason of 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.

VOTE: SUSTAINED

*The FIRST SPECIFICATION was corrected to conform with the statutory language of New York Education Law §6530(9)(b).

SECOND SPECIFICATON

Respondent violated New York State Education Law §6530(9)(d) by having had disciplinary action taken against him by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

Both the Respondent and his wife testified at the hearing and both were very sincere, credible witnesses.

Although the Hearing Committee voted unanimously (3-0) to sustain the two specifications against the Respondent, there are some mitigating factors which the Hearing Committee has taken into consideration in determining the issue of penalty:

1. With the exception of the instant charges, the Respondent's medical career has been without blemish. He served his country admirably in Vietnam and thereafter successfully graduated from SUNY-Buffalo Medical School

2. The charges against the Respondent essentially involved administrative and management shortcomings and do not reflect on his competence as a practicing physician.

3. There is no evidence of any patient harm.

4. There is no evidence that the administrative and management violations resulted in any financial gain to the Respondent.

5. The penalty ordered by the "Texas Board" was minimal and the Respondent continues to practice of family medicine in the state of Texas.

6. The Hearing Committee is convinced of the Respondent's sincerity and believes that there will be no repetition of these violations.

Based on the foregoing, the Hearing Committee determines unanimously (3-0) that, in the interest of justice, no action should be taken against Respondent's license to practice medicine in the State of New York.

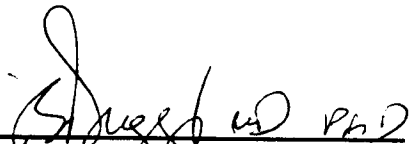
ORDER

IT IS HEREBY ORDERED THAT:

1. No action is to be taken against the Respondent's license to practice medicine in New York State.
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: *Albany*, New York

Nov. 17 1999


TERESA BRIGGS, M.D.
Chairperson

STEVEN LADIDUS, M.D.
SR. MARY THERSEA MURPHY

APPENDIX I



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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
TONE JOHNSON JR., M.D. : PROCEEDING

-----X

TO: TONE JOHNSON JR., M.D.
7029 Brandon St.
Corpus Christi, TX 78413

TONE JOHNSON JR., M.D.
3138 South Alameda
Suite A
Corpus Christi, TX 78404

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 18th day of August, 1999 at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

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 the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 8, 1999.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge or Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before

August 8, 1999 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 the Bureau of Adjudication, 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
July 8, 1999



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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518) 402-0820

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

-----X

IN THE MATTER : STATEMENT
OF : OF
TONE JOHNSON, JR., M.D. : CHARGES

-----X

TONE JOHNSON, JR., M.D., the Respondent, was authorized to practice medicine in New York state on April 16, 1982, by the issuance of license number 149548 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 10, 1999, the Texas State Board of Medical Examiners, (hereinafter "Texas Board"), issued an Agreed Order, (hereinafter "Texas Order"), that constituted a Public Reprimand of Respondent based upon violations of improper management of a Methadone treatment center of which the respondent owned 55% and was the medical director and program sponsor, which included, among others, changes of patients' methadone doses without a physician's order, changes of frequency of patients' clinic attendance without a physician's order, failure to have reviewed and counter signed admission medical evaluations, and failure to maintain adequate and complete records of patient treatments.

B. The conduct resulting in the Texas Board's disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(3) (negligence on more than one occasion);

2. New York Education Law §6530(11) (permitting, aiding or abetting an unlicensed person to perform activities requiring a license);

3. New York Education Law §6530(16) (failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine); and/or

4. New York Education Law §6530(33) (failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York State Education Law §6530(9)(b) by having had disciplinary action taken against him by a duly authorized professional disciplinary agency of another state where the conduct resulting in the disciplinary action would, if

committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

1. The facts in paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having had disciplinary action taken against him by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *July 8*, 1999
Albany, New York

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