



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

January 23, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Earl R. Manion, P.A.
445 Monument RD. Apt. 218
Jacksonville, FLA 32225

Kevin P. Donovan, Esq.
New York State Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

RE: In the Matter of Earl R. Manion, P.A.

Dear Mr. Manion and Mr. Donovan:

Enclosed please find the Determination and Order (No. BPMC-97-27) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

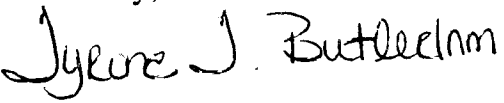
The notice of review served on the Administrative Review Board should be forwarded to:

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". The signature is written in a cursive style with a large initial 'T' and a distinct 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

IN THE MATTER
OF
EARL R. MANION, P.A.

DETERMINATION
AND
ORDER

BPMC-97-27

A Notice of Referral Proceedings and Statement of Charges, both dated November 20, 1996 were served upon the Respondent, Earl R. Manion, P.A. **JOHN WALDMAN, M.D.**, Chairman, **ALBERT BARTOLETTI, M.D.** and **DANIEL MORRISSEY, O.P.**, 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 January 8, 1997. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **KEVIN P. DONOVAN, ESQ.**, of Counsel. The Respondent failed to appear.

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 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

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.

1. Earl Manion, P.A. the Respondent, was authorized to practice as a Physician Assistant in New York State on August 31, 1973, by the issuance of license number 000070 by the New York State Education Department (Pet's. Exs. 1 and 2).
2. By Consent Order, entered July 8, 1996, the Board of Medicine of the State of Florida took disciplinary action against the Respondent based on his diversion of controlled substances for his own use, and based on his addiction to sedatives and opioids (Pet's. Ex. 3).
3. The conduct which formed the basis for the discipline in Florida would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely being dependent on or a habitual user of narcotics, barbiturates, or other drugs having similar effects within the meaning of New York Education §653098) (McKinney Supp. 1996), and practicing the profession fraudulently within the meaning of New York Education Law §6530(2) (McKinney Supp. 1996).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

DISCIPLINARY ACTION BY ANOTHER STATE

The Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d) (McKinney Supp. 1996) in that he had disciplinary action taken against his license 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.

SUSTAINED (VOTE 3-0)

DETERMINATION OF THE HEARING COMMITTEE

The Respondent failed to appear at the hearing nor did he submit any documentation to be considered by the Hearing Committee.

The record in this matter indicates that the Respondent diverted controlled substances for his own use and that he is severely impaired by his addiction to sedatives, opioids and alcohol.

There is no mitigating evidence in the record for the Hearing Committee to consider.

The Hearing Committee determined that the Respondent's license to practice as a Physician Assistant in the State of New York should be **REVOKED**.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice as a Physician Assistant in the State of New York is hereby **REVOKED**.

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
JAN 14, 1997



JOHN WALDMAN, M.D., Chairman

ALBERT BARTOLETTI, M.D.
DANIEL P. MORRISSEY, O.P.

TO: Earl R. Manion, P.A.
445 Monument RD. Apt. 218
Jacksonville, FLA 32225

Kevin P. Donovan, Esq.
New York State Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237



APPENDIX I

EXHIBIT
Pet. #1

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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
EARL R. MANION, P.A. : PROCEEDING

-----X

TO: EARL R. MANION, P.A.
445 Monument Road, Apt. 218
Jacksonville, Florida 32225

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 8th day of January, 1997, at 10:00 in the forenoon of that day at The New York State Department of Health, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor, 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, 433 River Street, Fifth Floor, 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 December 30, 1996.

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 indicted 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 December


30, 1996, 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
November 20, 1996


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

Inquiries should be addressed to:

Kevin P. Donovan
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
EARL R. MANION, P.A. : CHARGES

-----X

EARL R. MANION, P.A., the Respondent, was authorized to practice as a physician assistant in New York State on August 31, 1973, by the issuance of registration number 000070 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. By Consent Order entered July 8, 1996, the Board of Medicine of the State of Florida took disciplinary action against Respondent based on his diversion of controlled substances for his own use, and based on his addiction to sedatives and opioids.

B. The conduct which formed the basis for the discipline in Florida would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely being dependent on or a habitual user of narcotics, barbiturates, or other drugs having similar effects within the meaning of New York Education Law § 6530(8) (McKinney Supp. 1996), and practicing the profession fraudulently within the meaning of New York Education Law § 6530(2) (McKinney Supp. 1996).

SPECIFICATION OF MISCONDUCT


FIRST SPECIFICATION

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9)(d) (McKinney Supp. 1996) in that he had disciplinary action taken against his license 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 Petitioner charges:

1. The facts of paragraphs A and B.

DATED: *November 20,* 1996
Albany, New York


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