



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

April 5, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Fred Friedman, Esq.
36 West 44th Street
12th Floor
New York, New York 10023

Christopher John McCarthy, R.P.A.
P.O. Box 337
Jamesport, New York 11947

RE: In the Matter of Christopher John McCarthy, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-98) 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.

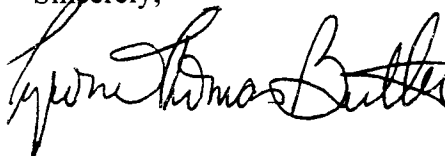
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER

OF

CHRISTOPHER JOHN MCCARTHY, RPA

DECISION

AND

ORDER

BPMC-00-98

A Notice of Referral Proceeding and Statement of Charges, both dated December 21, 1999, were served upon the Respondent, **CHRISTOPHER JOHN MCCARTHY, R.P.A.**

WILLIAM MAJOR, M.D., Chairperson, **HOWARD SOHNEN, MD.** and **JOHN TORRANT**, 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 March 22, 2000, 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 ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **FRED FRIEDMAN, ESQ.**, 36 West 44th Street (12th floor) New York, New York 10023.

Evidence was received and transcripts of these proceeding 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)(a)(i). 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. Christopher John McCarthy, the Respondent 2. Lawrence Eisenberg, M.S.W. 3. Diane Kaczorowski |

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 number 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. **CHRISTOPHER JOHN MCCARTHY, R.P.A.**, the Respondent, was authorized to practice as a Physician Assistant in New York state on January 28, 1987, by the issuance of license number 003170 by the New York State Education Department.

2. On December 4, 1998, in the County Court, Suffolk County, New York, Respondent was found guilty of Driving While Intoxicated (Misdemeanor), Failure to Stay in Lane, and Driving Without a Valid Drivers License and was sentenced to three (3) years probation, a \$500.00 fine, a mandatory surcharge of \$90.00 and a six (6) month suspension of his driving license. (Pet's. Ex. 5)

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York Law §6530(9)(a)(i) by reason of having been convicted of an act constituting a crime under New York state Law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Respondent was convicted of Driving While Intoxicated and that he has a history of alcoholism.

There are some mitigation factors in the record which the Hearing Committee has taken into consideration in determining the nature and severity of the penalty to be imposed upon the Respondent:

- The Respondent acknowledges his alcoholism and has sought professional help in dealing with this problem. He is enrolled in the Committee for Physicians Health, he attends Alcoholics Anonymous meeting 5-7 times per week and International Doctors Alcoholics Anonymous once a week. He has been in group therapy and keeps in touch with his therapist.
- The Respondent has been alcohol free for approximately the past three years.
- The charges against the Respondent do not reflect on his competence as a Physician Assistant and there is no evidence that his alcoholism interfered with his duties as a Physician Assistant.
- The Respondent has an improved support system which will aid his efforts at rehabilitation.
- The Hearing Committee is convinced that the Respondent is truly contrite concerning the conduct which led to his criminal conviction.

The Hearing Committee recognizes the Respondent's efforts at rehabilitation and wishes to reinforce this road to recovery.

The Hearing Committee determines that the appropriate penalty in this case is to **SUSPEND** the Respondent's license to practice as a Physician Assistant in New York State for a period of five (5) years, **STAY** said suspension and place the Respondent on probation for a period of five (5) years under terms and conditions as hereinafter specified in the ORDER.

ORDER

THEREFORE: IT IS HEREBY ORDERED THAT:

1. The Respondent license to practice medicine in the State of New York is **SUSPENDED** for five (5) years, suspension **STAYED**.
2. The Respondent is placed on probation for a period five (5) **YEARS** under the following terms and conditions:
 - Respondent shall conduct himself in all ways in a manner befitting his professional status, and conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
 - Respondent shall remain drug/alcohol free.
 - Respondent shall continue to be active in a self help group such as, but not limited to, Alcoholics Anonymous, International Doctors Alcoholics Anonymous and Caduces.

- Respondent shall notify all treating physicians of his history of alcohol/chemical dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
- Respondent shall practice only when monitored by qualified health care professional ("sobriety monitor", "practice supervisor" and "therapist") proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.
- Respondent shall ensure that the monitors are familiar with Respondent's drug/alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
- Respondent shall submit at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contracted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by the Respondent or a test is positive for any unauthorized substance.

- Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondents sobriety. These reports are to include (a) forensically valid results of all drug/alcohol monitoring test to be performed at a frequency of no less than bi-monthly for the first 6 months of the period of probation, then at a frequency to be proposed by the monitor and approved by the OPMC and (b) an assessment of self-help group attendance (e.g. AA/IDA/Caduceus, etc.), 12 step progress, etc.
- Respondent shall practice as a Physician Assistant only when supervised in his practice. The practice supervisor shall be on-site at all locations, unless determined otherwise by Director of OPMC. Respondent shall not practice as a Physician Assistant until a practice supervisor is in a position to regularly observe and assess Respondent's practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable practice or possible misconduct to OPMC.
- Respondent shall submit to a daily breathalyzer test at the option of the hospital.
- Respondent shall cause the practice supervisor to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposing of controlled substance.

- Respondent shall cause the practice supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practice, and compliance or failure to comply with any term of probation.
- Respondent shall continue in counseling or other therapy with Lawrence Eisenberg, M.S.W. or with another therapist approved by OPMC, as long as the therapist determines is necessary, or for the period of time dictated in the Order.
- Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certify whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if respondent leaves treatment against medical advise, or displays any symptoms of suspected or actual relapse.
- Any change in the monitoring physician, supervising physician or treating professional shall be reported immediately to OPMC and any successor monitoring physician, supervising physician or treating professional must be approved by the Director of OPMC.

- Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
 - Respondent shall continue his enrollment in the Committee for Physicians' Health (CPH) and shall engage in a contract with CPH which fully describes the terms, conditions and duration of a program to assist the Respondent in the rehabilitation of his impairment. Respondent shall fully comply with the contract.
 - Respondent shall provide a written authorization for CPH to provide to the Director of OPMC with any/all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract.
 - CPH shall report to OPMC if Respondent refuses to comply with the contract, refuses to submit to treatment or whose impairment is not substantially alleviated by treatment . CPH shall report immediately to OPMC if Respondent is regarded at anytime to be an imminent danger to the public.
3. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice as a Physician Assistant in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of Physician Assistant in New York State for period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of

probation which were not fulfilled shall upon Respondent's return to practice in New York State.


4. Respondent shall fully cooperate with and respond in a timely manner to request from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

5. Respondent shall comply with all terms, conditions, restrictions, limitations, and penalties to which he is subject pursuant to this Order and shall assume and bear all cost related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

6. The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: ,New York

Mar 31, 2000


WILLIAM MAJOR, M.D., Chairperson

HOWARD SOHNEN, M.D.
MR. JOHN TORRANT

APPENDIX I

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

**IN THE MATTER
OF
CHRISTOPHER JOHN MCCARTHY, RPA**

NOTICE
OF
REFERRAL
PROCEEDING

TO: CHRISTOPHER JOHN MCCARTHY, RPA
P.O. Box 337
Jamesport, New York 11947

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 19th day of January, 2000 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 January 10, 2000.

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 January 10, 2000 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
December 21, 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 |
| CHRISTOPHER JOHN MCCARTHY, RPA | CHARGES |

-----X

CHRISTOPHER JOHN MCCARTHY, M.D., the Respondent, was authorized to practice medicine in New York state on January 28, 1987, by the issuance of license number 003170 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 4, 1998, in the County Court, Suffolk County, New York, Respondent was found guilty of Driving While Intoxicated (Misdemeanor), Failure to Stay in Lane, Speeding, and Driving Without a Valid Drivers License and was sentenced to three (3) years probation, a \$500.00 fine, a mandatory surcharge of \$90 and a six (6) month suspension of his driving license.

SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York Education Law §6530(9)(a)(i) by reason of having been convicted of an act constituting a crime under New York state law in that the Petitioner charges:

1. The facts in paragraphs A.

DATED: *Dec 21*, 1999
Albany, New York



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