



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

April 1, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Evelyn M. Tenenbaum, Esq.
NYS Department of Health
Corning Tower Room 2503
Empire State Plaza
Albany, New York 12237

James Okun, M.D.
48-58 West Armitage Avenue 2nd Floor
Chicago, Illinois 60639

Jeremiah McKenna, Esq.
60 Bay Street
Staten Island, New York 10301

RE: In the Matter of James Okun, M.D.

Dear Ms. Tenenbaum, Dr. Okun and Mr. McKenna:

Enclosed please find the Determination and Order (No. 97-79) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

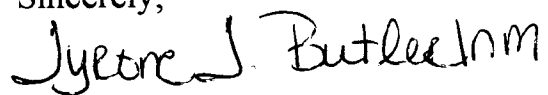
The notice of review served on the Administrative Review Board should be forwarded to:

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 the initials "TBM". The signature is written in a cursive style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

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

-----X
IN THE MATTER : DETERMINATION
: :
OF : : AND
: : :
JAMES OKUN, M.D. : : ORDER
-----X

BPMC-97-79

A Notice of Referral Proceeding and Statement of Charges, both dated January 7, 1997, were served upon the Respondent, James Okun, M.D. **IRVING CAPLAN (Chair), ALBERT L. BARTOLETTI, M.D., and J. LaRUE WILEY, M.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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Evelyn M. Tenenbaum, Esq., Assistant Counsel. The Respondent appeared by Jeremiah McKenna, Esq., of Counsel. A hearing was held on March 19, 1997. 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 Section 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) [having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state] and 6530(9)(d) [having had disciplinary action taken by a duly authorized professional disciplinary agency of another state]. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

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. James Okun, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on March 5, 1984 by the issuance of license number 157568 by the New York State Education Department. (Pet. Ex. #2).

2. On or about July 29, 1995, the Louisiana State Board of Medical Examiners (hereinafter the "Louisiana Board") issued an Opinion and Ruling concerning Respondent's violation of various provisions of the Louisiana Medical Practice Act. The Louisiana Board found Respondent guilty of professional misconduct in that he (1) pled *nolo contendere* to the criminal charge of assault with a dangerous weapon (automobile) in violation of Louisiana Revised Statutes (R.S.) 37:1285(A)(1); (2) untruthfully answered the question on his 1992 Louisiana medical license renewal application as to whether he had been charged with, convicted of or pled guilty or *nolo contendere* to a violation of any statute, in violation of R.S. 37:1285(A)(3); and (3) placed an advertisement in a newspaper that was fraudulent, false, deceptive or misleading and calculated to deceive the public, in violation of R.S. 37:1285(A)(7) and (10). (Pet. Ex. # 3).

3. The Louisiana Board ordered that Respondent be evaluated by a psychiatrist satisfactory to that Board, and make a personal appearance before the Board. The Louisiana Board further ordered that, in the event that Respondent had not completed the evaluation and made a personal appearance within

sixty days of July 29, 1995, his license to practice medicine would be suspended as of that date and remain suspended until he complied with the above orders. Respondent did not comply with the Louisiana Board's orders and his license was, and continues to be suspended in Louisiana. (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 regarding this matter. The preponderance of the evidence demonstrates that Respondent was found guilty of professional misconduct and disciplined by the Louisiana Board, the duly authorized professional disciplinary agency of the state of Louisiana. Moreover, the Committee concluded that Respondent's conduct concerning his false statements to the Louisiana Board and his deceptive advertising would, if committed in New York State would constitute professional misconduct in violation of Education Law §6530(1) [obtaining the license fraudulently], Education Law §6530(2) [practicing the profession fraudulently], Education Law §6530(20) [conduct in the practice which evidences moral unfitness to practice medicine], Education Law §6530(21) [willfully making or filing a false report], and Education Law §6530(27) [advertising or soliciting for patronage that is not in the public interest]. Accordingly, the Committee sustained the first specification of professional misconduct.

The Hearing Committee further concluded that Respondent's failure to comply with the order of the Louisiana Board requiring a psychiatric examination would, if committed in New York State, constitute professional misconduct in violation of Education Law §6530(15) [failure to comply with an order directing a licensee to submit to a psychiatric examination], as well as Education Law §6530(29) [violating any condition imposed on the licensee]. Therefore, the Hearing Committee voted to sustain the second specification as well.

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 revoked. 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.

Respondent was disciplined by the Louisiana Board following a hearing at which Respondent failed to appear in person, although he was represented by local counsel. The Louisiana Board found Respondent guilty of pleading *nolo contendere* to a felony in the state of Oklahoma, and of making fraudulent statements to the Board regarding that plea. In addition, the Louisiana Board found Respondent guilty of engaging in fraudulent and deceptive advertising regarding an alleged

treatment for genital herpes. The Louisiana Board was concerned by statements made by Respondent in his response to the Administrative Complaint (see, Petitioner's Exhibit #3) and found that it could not properly determine the sanctions to be imposed until Respondent underwent a psychiatric evaluation.

Respondent did appear at this proceeding, and the Hearing Committee had the opportunity to evaluate his testimony. The Committee concluded that Respondent's testimony was not credible. Respondent testified that he was the victim of mistaken identity in the Oklahoma incident and that a private investigator hired on his behalf had evidence to that effect. However, according to Respondent, the investigator inexplicably failed to appear at the hearing and his attorney then induced him to settle the case. This story is at odds with the statements made by Respondent to the Louisiana Board in which he alleged that his Oklahoma counsel failed to subpoena the investigator.

Respondent also testified that he was told that a *nolo* plea would be equivalent to an acquittal, and that the transcript of the criminal proceedings would prove this point. However, he failed to produce the transcript at the hearing.

Lastly, Respondent claimed that he did not undergo the psychiatric evaluation mandated by the Louisiana Board because he couldn't work due to the Board's action and had to leave the state. However, the suspension imposed by the Louisiana Board took effect only after Respondent failed to undergo a psychiatric evaluation and make a personal appearance before the Board.

The Hearing Committee agrees with the Louisiana Board,

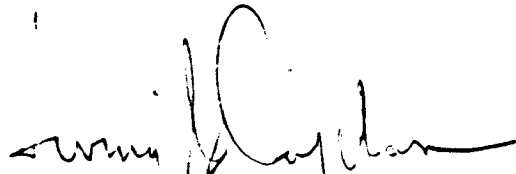
which found that Respondent has demonstrated a disregard for the law, for the truth and for the standards of the profession. The Committee also took note of the fact that Respondent has moved from state to state, as other jurisdictions have revoked his medical license. The Hearing Committee unanimously determined that no sanction short of revocation will adequately protect the people of New York State. Respondent may apply for restoration of his license one year after the effective date of the revocation. At that time, Respondent will have an opportunity to demonstrate that he has undergone the psychiatric evaluation mandated by the Louisiana Board, as well as any necessary follow-up treatment.

ORDER

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

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**;
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
MARCH 16 1997



IRVING CAPLAN (CHAIR)

ALBERT L. BARTOLETTI, M.D.
J. LaRUE WILEY, M.D.

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TO: Evelyn M. Tenenbaum, Esq.
Assistant Counsel
New York State Department of Health
Tower Building - Room 2503
Albany, New York 12237

James OKUN, M.D.
48-58 West Armitage Avenue - 2nd Floor
Chicago, Illinois 60639

Jeremiah McKenna, Esq.
60 Bay Street
Staten Island, New York 10301

APPENDIX I

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

-----X
IN THE MATTER : NOTICE OF
OF : REFERRAL
JAMES O'KUN, M.D. : PROCEEDING
-----X

TO: JAMES O'KUN, M.D.
48-58 West Armitage Avenue, 2d Floor
Chicago, Illinois 60639

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 March, 1996 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 March 10, 1997.

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 March 10, 1997, 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
January 7, 1997

Peter D. Van Buren

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

Inquiries should be addressed to:

Evelyn M. Tenenbaum, Esq.
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2503
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

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IN THE MATTER : STATEMENT
OF : OF
JAMES O'KUN, M.D., : CHARGES
Respondent :

-----X

JAMES O'KUN, M.D., the Respondent, was authorized to practice medicine in New York State on March 5, 1984 by the issuance of license number 157568 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. On or about July 29, 1995, the Louisiana State Board of Medical Examiners (Louisiana Board) issued an Opinion and Rules concerning Respondent's violation of various provisions of the Louisiana Medical Practice Act.

2. The Louisiana Board found Respondent guilty of professional misconduct in that he (1) pled nolo contendere to the criminal charge of assault with a dangerous weapon (automobile) which constitutes a felony under the laws of Louisiana in violation of Louisiana Revised Statutes (R.S. 37:1285(A)(1); (2) untruthfully answered the question on Louisiana medical license renewal application as to whether

had been charged with, convicted of or plead guilty or nolo contendere to a violation of any statute in violation of R.S. 37:1285(A) (3); and (3) placed an advertisement in a newspaper that was fraudulent, false, deceptive or misleading and calculated to deceive the public in violation of R.S. 37:1285(A) (7) and (10). Respondent's misconduct is set forth in detail in the Louisiana Board's Opinion and Ruling.

3. Respondent's conduct upon which the Louisiana Board's findings of guilt were based would, if committed in New York State, constitute professional misconduct under the laws of New York State, including but not limited to: N.Y. Education Law §6530(1) [obtaining the license fraudulently] and/or N.Y. Education Law §6530(2) [practicing the profession fraudulently] and/or N.Y. Education Law §6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine] and/or N.Y. Education Law §6530(21) [willfully making or filing a false report] and/or N.Y. Education Law §6530(27) [advertising or soliciting for patronage that is not in the public interest].

4. The Louisiana Board, by an Opinion and Ruling issued on or about July 29, 1995, ordered that Respondent be evaluated by a psychiatrist satisfactory to the Louisiana Board and make a personal appearance before the Board. The Louisiana Board further ordered that, in the event that Respondent had not completed the evaluation and made a personal appearance within 60 days of July 29, 1995, his license to practice medicine would be suspended as of that date and remain suspended until he complied

with the above orders.

5. Respondent did not comply with the Louisiana Board's orders and his license was, and continues to be, suspended in Louisiana.

6. The conduct resulting in the discipline imposed on Respondent by the State of Louisiana would, if committed in New York State, constitute professional misconduct under the laws of New York State, under the following sections of New York Law: N.Y. Education Law §6530(15) [failure to comply with an order directing a licensee to submit to a psychiatric examination] and/or N.Y. Education Law §6530(29) [violating any condition imposed on the licensee].

FIRST SPECIFICATION

FINDING OF GUILT OF PROFESSIONAL MISCONDUCT BY ANOTHER STATE

Respondent is charged with professional misconduct under N.Y. Education Law §6530(9)(b), by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional 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, in that Petitioner charges:

1. The facts in Paragraphs 1 and/or 2 and/or 3.

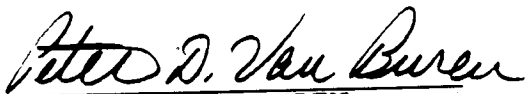
SECOND SPECIFICATION

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Education Law §6530(9)(d) (McKinney Supp. 1996) by reason of his having had disciplinary action taken 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 in paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6.

DATED: January 7, 1997
Albany, New York


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