



# 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., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

February 27, 2001

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Maher, Esq.  
Robert Bogan, Esq.  
NYS Department of Health  
Hedley Building – 4<sup>th</sup> Floor  
433 River Street  
Troy, New York 12180

Brendan L. O'Hara, M.D.  
3901 Glenhurst Drive SE  
Smyrna, Georgia 30080-5897

**RE: In the Matter of Brendan L. O'Hara, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-49) 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 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, appearing to read "Tyrone T. Butler". The signature is fluid and cursive, with the first name "Tyrone" being more prominent.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
BRENDAN L. O'HARA, M.D.**

**DETERMINATION**

**AND**

**ORDER**

**BPMC #01-49**

A Notice of Referral Proceeding and Statement of Charges, both dated, November 21, 2000, were served upon the Respondent, **BRENDAN L. O'HARA, M.D.**

**MICHAEL R. GOLDING, M.D.**, Chairperson, **MOHAMMAD GHAZI-MOGHADAM, M.D.** and **STEPHEN E. WEAR, Ph.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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on February 15, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **PAUL ROBERT MAHER, ESQ.**, and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf.

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)(iii), (9)(b) and (9)(d). A copy of the Notice of Referral Proceeding and the Statement of Charges is attached to this Determination and Order as Appendix 1.

### **WITNESSES**

For the Petitioner:

None

For the Respondent:

Brendan L. O'Hara, M.D., the Respondent

## 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. **BRENDAN L. O'HARA, M.D.**, the Respondent, was authorized to practice medicine in New York State on June 17, 1977, by the issuance of license number 130885 by the New York State Education Department. (Pet's Ex. 4)
2. On August 29, 2000, in the Newton County Probate Court, Georgia, the Respondent pleaded nolo contendere to Driving Under the Influence of Drugs, and was sentenced to twelve (12) months confinement to be served as probation with conditions and a \$580.00 fine. (Pet's Ex. 5)
3. On February 27, 2000, the Composite State Board of Medical Examiners, State of Georgia (hereinafter "Georgia Board"), by a "Public Consent Order Suspending License" (hereinafter "Georgia Order 1"), indefinitely suspended the Respondent's license to practice medicine, required him to enter into treatment for chemical dependency and comply with any recommended treatment and follow-up care, abstain from the consumption of alcohol and mood altering substances, based on his arrest for DUI, his writing prescriptions in his wife's name for his own use, and a mental and physical evaluation that indicated that he was unable to practice with reasonable skill and safety to patients due to chemical dependency. (Pet's Ex. 6)

4. On May 15, 2000, the Georgia Board, by a "Public Consent Order Lifting Suspension" (hereinafter "Georgia Order 2"), placed Respondent's license on indefinite probation and ordered him to abide by all terms of his continuing aftercare contract, to participate in support groups, designate a supervising physician, submit quarterly reports, abstain from mood altering substances, limit his work hours, submit to random drug screens, restrict his prescribing of controlled substances, and keep accurate records, based on the action described in Finding of Fact No. 3 above and his successful completion of a treatment program for opiate dependency. (Pet's Ex. 6)

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct resulting in the Georgia Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(8) (being an habitual user of or dependent on narcotics or other drugs);
- New York Education Law §6530(32) (failure to maintain accurate records).

### **VOTE OF THE HEARING COMMITTEE**

#### **SPECIFICATION**

#### **FIRST SPECIFICATION**

Respondent violated New York State Education Law §6530(9)(a)(iii) by reason of having been convicted of an act constituting a crime under the law of another jurisdiction and which if committed in New York State would have constituted a crime under the laws of

New York State.

**VOTE: SUSTAINED (3-0)**

### **SECOND SPECIFICATION**

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 (3-0)**

### **THIRD SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by reason of having had his license suspended or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension or other 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**

The record in this case indicates that the Respondent is an impaired physician by reason of chemical dependency.

Given the facts of this case, the Hearing Committee determines that the interests of the people of the State of New York will be best served by suspending the Respondent's



Given the facts of this case, the Hearing Committee determines that the interests of the people of the State of New York will be best served by suspending the Respondent's license until such time as he makes a showing to the satisfaction of a committee of professional medical conduct of the State Board for Professional Medical Conduct that he is not incapacitated for the active practice of medicine provided, however, that the committee may impose reasonable conditions on the licensee, if it determined that due to the nature and extent of the licensee's former incapacity such conditions are necessary to protect the health of the people.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED** until such time as he makes a showing to the satisfaction of a committee of professional medical conduct of the State Board for Professional Medical Conduct that he is not incapacitated for the active practice of medicine provided, however, that the committee may impose reasonable conditions on the licensee, if it determined that due to the nature and extent of the licensee's former incapacity such conditions are necessary to protect the health of the people.

DATED: 23 Feb, 2001  
 , New York

  
MICHAEL R. GOLDING, M.D., Chairperson

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## APPENDIX I

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

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**IN THE MATTER**  
  
**OF**  
  
**BRENDAN L. O' HARA, M.D.**

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**NOTICE OF**  
  
**REFERRAL**  
  
**PROCEEDING**

**TO:** BRENDAN L. O' HARA, M.D.  
3901 Glenhurst Drive SE  
Smyrna, GA 30080-5897

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 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 17<sup>th</sup> day of January, 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> 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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON.

**EXHIBIT**

*1*  
*DEC 21/5/01*

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before January 8<sup>th</sup>, 2001.


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 of 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 8<sup>th</sup>, 2001, 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 21*, 2000

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

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0820

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

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IN THE MATTER  
OF  
BRENDAN L. O' HARA, M.D.

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STATEMENT  
OF  
CHARGES

**BRENDAN L. O' HARA, M.D.**, the Respondent, was authorized to practice medicine in New York state on June 17, 1977, by the issuance of license number 130885 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about August 29, 2000, in the Newton County Probate Court, Georgia, Respondent ~~was found guilty of~~ <sup>pleaded Not Guilty</sup> Driving Under the Influence of Drugs, and was sentenced to twelve (12) months confinement to be served as probation with conditions and a \$580.00 fine.

B. On or about February 27, 2000, the Composite State Board of Medical Examiners, State of Georgia (hereinafter "Georgia Board"), by a Public Consent Order Suspending License (hereinafter "Georgia Order 1"), indefinitely suspended Respondent's license to practice medicine, required him to enter into treatment for chemical dependency and comply with any recommended treatment and follow-up care, abstain from the consumption of alcohol and mood altering substances, based on his arrest for DUI, his writing prescriptions in his wife's name for his own use, and a mental and physical evaluation that indicated that he was unable to practice with reasonable skill and safety to patients due to chemical dependency.

C. On or about May 15, 2000, the Georgia Board, by a Public Consent Order Lifting Suspension, (hereinafter "Georgia Order 2"), placed Respondent's license on indefinite probation and ordered him to abide by all terms of his continuing aftercare contract, to participate in support groups, designate a supervising physician, submit quarterly reports, abstain from mood altering substances, limit his work hours, submit to random drug screens, restrict his prescribing of controlled substances, and keep accurate records, based on the action

in described Factual Allegation Above, and his successful completion of a treatment program for opiate dependency.

D. The conduct resulting in the Georgia 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(8) (being an habitual user of or dependent on narcotics or other drugs);
3. New York Education Law §6530(16) (failure to comply with substantial provisions of federal, state or local laws);
4. New York Education Law §6530 (20) (moral unfitness); and/or
5. New York Education Law §6530 (32) (failure to maintain accurate records).

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530 (9)(a)(iii) by reason of having been convicted of an act constituting a crime under the law of another jurisdiction and which if committed in New York state would have constituted a crime under the laws of New York state, in that Petitioner charges:

1. The facts in paragraph A.

#### **SECOND SPECIFICATION**

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, in that Petitioner charges:

2. The facts in paragraphs A, B, C, and/or D.




### THIRD SPECIFICATION

Respondent violated New York Education Law §6530 (9)(d) by reason of having had his license suspended or having other disciplinary action taken after a disciplinary action was instituted by a by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

3. The facts in paragraphs A, B, C, and/or D.

DATED: *Nov. 21*, 2000  
Albany, New York

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