



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 8, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

Donald G. Oehlecker, P.A.
Columbia Wesley Medical Center
Wichita, Kansas 67214

RE: In the Matter of Donald G. Oehlecker, P.A.

Dear Mr. Bogan and Dr. Oehlecker:

Enclosed please find the Determination and Order (No. 97-07) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

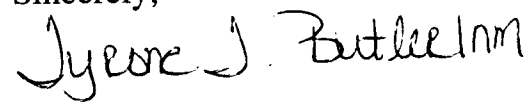
The notice of review served on the Administrative Review Board should be forwarded to:

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,

Handwritten signature of Tyrone T. Butler in black ink.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

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

IN THE MATTER

-OF-

DONALD G. OEHLECKER, P.A.

DECISION

AND

ORDER

OF THE

HEARING

COMMITTEE

BPMC ORDER

NO. 97 07

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated November 12, 1996 which were served upon DONALD G. OEHLECKER, P.A., (hereinafter referred to as "Respondent"). ARSENIO G. AGOPOVICH, M.D., Chairperson, ALBERT L. BARTOLETTI, M.D., and NANCY J. MACINTYRE, R.N., 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. JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as the Administrative Officer. A hearing was held on December 18, 1996 at Hedley Park Place, Troy, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by HENRY M. GREENBERG, ESQ., General Counsel, by ROBERT BOGAN, ESQ., Assistant Counsel, Bureau of Professional Medical Conduct. Respondent did not appear in person but did submit a written statement which was distributed to the Committee. Evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530(9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(a)(i) and 6530 (9)(a)(ii) (having been convicted of crimes under federal law and the laws of another jurisdiction where the Conduct upon which the convictions are based would constitute crimes under New York State law). The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

FINDINGS OF FACT

The Committee adopts the factual statements set forth on page one of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS
WITH REGARD TO
FACTUAL ALLEGATIONS
SPECIFICATIONS
AND
PENALTY

Petitioner herein has proven by a preponderance of the evidence that Respondent was found guilty of acts constituting crimes before a General Court Martial. The said acts would constitute crimes if committed in New York. Therefore, the Factual Allegations and Specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

This Respondent does not deny that he committed adultery and sodomy. Under the rule of collateral estoppel, he cannot deny that he engaged in obstruction of justice. In his written statement (Ex. A.) Respondent seems to be saying that while he, an officer, had an affair with an enlisted woman, it is acceptable behavior, at least before this body, because it did not involve a patient. Clearly, Respondent has misunderstood the purpose of this proceeding, not from a legal stand point, but rather from the standpoint of an ethical member of society as a whole, and the medical community in particular.

The Committee takes notice that in the military, it is a serious infraction for an officer to become overly familiar with an enlisted person. The wisdom of this rule and even the frequency of violations of this rule is irrelevant. Respondent was in the military. As an officer, he was there by choice (as opposed to forced enlistment or the draft). Having made the career choice to become a military officer, he was required to live by a set of codified rules and regulations. He broke the rules he had adopted. He was caught, tried, convicted and punished¹. Yet Respondent refuses to admit that he broke a rule. There are other times and other places wherein one may debate the

¹His trial is presently under appeal but under New York State law, a pending appeal is not relevant in a direct referral.

wisdom or morality of the standard in question, but this is not the forum for such a discussion. Had Respondent acknowledged, however reluctantly, the finding of the court martial, there might be some hope of rehabilitation. However, Respondent's denial of a clear violation of a standard he chose to live by gives this body pause to think about which other standards Respondent would choose to violate.

Respondent's statement is filled with cynicism and sarcasm for this body as well as authority in general. Unfortunately, respect for authority is essential to the appropriate practice of the medical arts. Medicine has defined standards which all practitioners are required to follow. This Committee doubts Respondent would have any hesitation regarding the violation of a medical standard which he, in his own independent judgment, thought was unnecessary for him to follow. Respondent, by his own words, demonstrates cynicism, sarcasm, bitterness and denial. These qualities are a potion for disaster in the medical community. The people of this state must be protected from this sort of practitioner.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby ORDERED that:

1. The Factual allegations in the Statement of Charges (Appendix One) are SUSTAINED;

Furthermore, it is hereby ORDERED that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are SUSTAINED;

Furthermore, it is hereby ORDERED that;

3. The license of Respondent to practice medicine in the state of New York is hereby REVOKED;

Furthermore, it is hereby ORDERED that;

4. This order shall take effect UPON RECEIPT or SEVEN (7) DAYS after mailing of this order by Certified Mail.

Dated:
Troy, New York

January 6 1997



ARSENIO G. AGOPOVICH, M.D., Chairperson

ALBERT L. BARTOLETTI, M.D.,
NANCY J. MACINTYRE, R.N., Ph.D.

(MP)

TO:

ROBERT BOGAN, ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
5 Penn Plaza, suite 601
New York, N.Y. 10001

DONALD G. OEHLECKER, P.A.
Columbia Wesley Medical Center
Wichita, Kansas 67214

APPENDIX ONE

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

PETITIONER'S
EXHIBIT

12-18-96

-----X
IN THE MATTER : NOTICE OF
OF : REFERRAL
DONALD G. OEHLECKER, P.A. : PROCEEDING
-----X

TO: DONALD G. OEHLECKER, P.A.
Columbia Wesley Medical Center
550 North Hillside
Wichata, Kansas 67214

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 December 1996 at 10:00 in the forenoon of that day at the Legislative Office Building, 7th Floor - Room 711A, Empire State Plaza, Albany, New York 12248.

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 December 9, 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 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


December 9, 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 17, 1996


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

Inquiries should be addressed to:

Robert Bogan
Assistant 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
DONALD G. OEHLECKER, P.A. : CHARGES

-----X

DONALD G. OEHLECKER, P.A., the Respondent, was registered as a Physician's Assistant in New York State on July 26, 1989, by the issuance of registration number 003787 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department as a Physician's Assistant for the period January 1, 1996 to June 30, 1997.

FACTUAL ALLEGATIONS

1. On or about February 17, 1994, Respondent was convicted of the following offenses:

Adultery;

Obstructing Justice; and


Sodomy

all in violation of the Uniform Code of Military Justice, Articles 134 and 125, in a General Court-Martial of the United States Army under Federal Law. That conviction was approved and finalized on June 29, 1994. The conduct upon which the Court-Martial was based would, if committed within New York State have constituted crimes under New York State Law.

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530 (9)(a)(ii) and/or (iii) (McKinney Supp. 1996) by reason of having been convicted of committing acts constituting crimes under Federal Law and/or the laws of another jurisdiction and which, if committed within New York State, would have constituted crimes under New York State law in that, Petitioner charges the facts in Paragraph 1.

DATED: *Nov. 12,* 1996
Albany, New York


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