



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

June 15, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael McTighe, Esq.
NYS Department of Health
Corning Tower – Room 2509
Empire State Plaza
Albany, New York 12237

Alan Perl, M.D.
Plymouth County Jail
10 Obery Street
Plymouth, Massachusetts 12360-2130

RE: In the Matter of Alan Perl, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-128) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

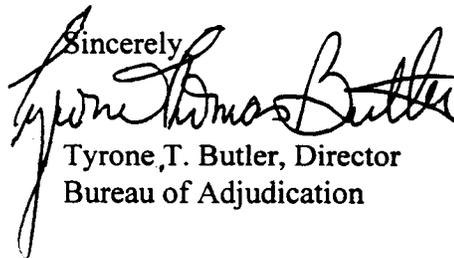
All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

**IN THE MATTER

OF

ALAN PERL, M.D.**

**DETERMINATION

AND

ORDER**

ORDER #99-128

A Notice of Referral Proceeding, dated March 4, 1999, Statement of Charges, dated January 14, 1999 and Commissioner's Summary Order, dated January 20, 1999, were each served upon the Respondent, **ALAN PERL, M.D.** **CHARLES J. VACANTI, M.D.**, (Chairperson), **ERNST A. KOPP, M.D.** and **JOHN VERNIEU**, 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. **JEFFREY ARMON**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on April 28, 1999. The Department of Health appeared by **HENRY M. GREENBERG**, General Counsel, by **MICHAEL McTIGHE**, Esq., of Counsel. The Respondent did not appear and was unrepresented, but submitted documents on his behalf. 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, Respondent was charged with professional misconduct pursuant to Education Law Sections 6530(9)(a) and (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 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. Respondent was authorized to practice medicine in New York State on July 1, 1978, by the issuance of license number 134780 by the New York State Education Department. (Ex. 1)

2. On June 4, 1998, Respondent was convicted by a jury in Plymouth, Massachusetts Superior Court of violations of Massachusetts statutes related to the unlawful distribution or dispensing of oxycodone, a controlled substance, and the unlawful distribution of oxycodone in a drug free school zone. Respondent was sentenced to three years imprisonment and is currently incarcerated at the Plymouth County House of Corrections. (Ex. 3)

3. In a Final Decision and Order dated October 7, 1998, the Massachusetts Board of Registration in Medicine revoked Respondent's license to practice medicine in Massachusetts, based on his June 4, 1998 criminal conviction. (Ex. 4)

4. The Acting Commissioner of the New York Department of Health issued a Summary Order, dated January 20, 1999, by which Respondent was ordered to immediately cease practicing medicine in New York. This Order was based on Respondent's criminal conviction for conduct which, had it occurred in New York, would have constituted a felony under New York law. (Ex. 1)

5. Respondent was personally served with the Commissioner's Summary Order, Notice of Referral Proceeding and Statement of Charges related to this proceeding on March 9, 1999. (Ex.1)

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 determined that Respondent had been properly served with the Notice of Hearing and Statement of Charges based on the Affidavit of Service (Ex.1) and that it had obtained jurisdiction over the Respondent as a result.

The Hearing Committee further determined that the Department had met its burden of proof and concluded that the preponderance of the evidence demonstrated that Respondent was convicted of a violation of Massachusetts law for an act which would have been considered a violation of New York law (Penal Law Section 220.65; Criminal Sale of a Prescription or a Controlled Substance) had it occurred in New York. In addition, the Massachusetts Board took disciplinary action against Respondent's license to practice in that State. The basis for such action was conduct which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York

Education Law Section 6530(9)(a)(iii) [being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within New York, would have constituted professional misconduct under the laws of New York state]. The Hearing Committee therefore determined to sustain the Specifications set out in the Statement of Charges (Ex.1).

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 should be revoked. This decision was made following due consideration of the full spectrum of penalties available pursuant to statute, including license revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Committee concluded that license revocation was the only appropriate penalty based on the serious nature of Respondent's criminal conduct. Respondent provided documentation indicating that his criminal conviction is being appealed. He may notify the Board in the event such conviction is reversed.

ORDER

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

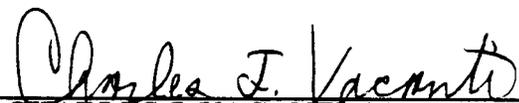
1. The Specifications contained within the Statement of Charges (Ex. 1) are **SUSTAINED**, and;

2. Respondent's license to practice medicine in New York State be, and hereby is, **REVOKED**, and;

3. 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

11 June, 1999



CHARLES J. VACANTI, M.D. (Chairperson)

**ERNST A. KOPP, M.D.
JOHN VERNIEU**

TO:

Michael McTighe, Esq.
Bureau of Professional Medical Conduct
Division of Legal Affairs
Corning Tower
Empire State Plaza
Albany, New York 12237

Alan Perl, M.D.
Plymouth County Jail
10 Obery Street
Plymouth, Massachusetts 12360-2130

APPENDIX ONE

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
ALAN PERL, M.D. : PROCEEDING

-----x

TO: ALAN PERL, M.D.
Plymouth County Jail
10 Obery Street
Plymouth, MA 12360-2130

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p), (12)(b), 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 31st day of March, 1999, 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, pursuant to the Commissioner's Summary Order dated January 20, 1999, 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 or professional misconduct in other jurisdictions, evidence may be offered which would show that the conduct underlying the conviction would not be a crime or misconduct 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 19, 1999.

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 19, 1999, 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
March 4, 1999



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

Inquiries should be addressed to:

Michael J. McTighe, Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower Room 2585
Empire State Plaza
Albany, New York 12237
(518) 474-5168

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ALAN PERL, M.D. : CHARGES

-----X

ALAN PERL, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1978, by the issuance of license number 134780 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in New York. Respondent's current address is Plymouth County Jail, 10 Obery Street, Plymouth, MA 02360-2130.

FACTUAL ALLEGATIONS

- A. On June 4, 1998, Respondent was convicted by a jury in Plymouth, Massachusetts, Superior Court for violations of Massachusetts G.L.c.94Cs.32A (unlawful distribution or dispensing of oxydcodone, a controlled substance), and Massachusetts G.L.c.94Cs.32J (unlawful distribution of oxycodone in a drug free school zone). Respondent was sentenced to three years imprisonment at the Plymouth County House of Corrections, and is currently incarcerated at the Plymouth County House of Corrections.
- B. By is Final Decision & Order dated October 7, 1998, the Massachusetts Board of Registration in Medicine revoked Respondent's license to practice medicine in Massachusetts, based on Respondent's June 4, 1998, criminal conviction.

SPECIFICATIONS

FIRST SPECIFICATION

**CONVICTION OF AN ACT CONSTITUTING A CRIME
UNDER THE LAW OF ANOTHER JURISDICTION**

Respondent is charged with professional misconduct under N.Y.Educ.Law Sec. 6530(9)(a)(iii) by reason of his having been convicted of committing an act or acts which would have constituted a felony under New York State law, in that Petitioner charges the facts contained in Paragraph A.

SECOND SPECIFICATION

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct as defined in N.Y.Educ.Law Sec. 6530(9)(d) by reason of his having his license to practice medicine in Massachusetts revoked by the Commonwealth of Massachusetts Board of Registration in Medicine, a duly authorized disciplinary agency, based upon conduct which would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges the facts contained in Paragraphs A and B.

DATED: January 14, 1999
Albany, New York


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