



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

November 26, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Denise Lepicier, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Alan J. Ross, D.O.
721 Walker Spring Road
Knoxville, Tennessee 37902

Steven G. Shope, Esq.
Cruze & Shope
1610 Plaza Tower
Knoxville, Tennessee 37929

RE: In the Matter of Alan J. Ross, D.O.

Dear Ms. Lepicier, Mr. Shope and Dr. Ross:

Enclosed please find the Determination and Order (No. BPMC-93-196) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 than 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), "(t)he 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 all action 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.

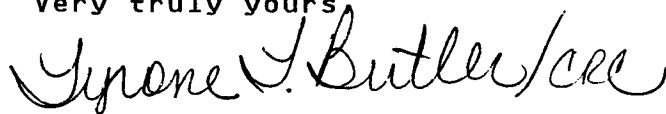
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower - Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler/crc". The signature is written in black ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF :
ALAN J. ROSS, D.O. : ORDER
-----X

NO. BPMC-93-196

A Notice of Hearing and Statement of Charges, both dated September 21, 1993, were served upon the Respondent, Alan J. Ross, D.O. **BENJAMIN WAINFELD, M.D. (Chair), PHILLIP I, LEVITAN, M.D., and JOHN T. VERNIEU, ESQ.,** 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, ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. A hearing was held on November 10, 1993. The Department of Health appeared by Denise Lepicier, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. 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 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 is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and/or (d). 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. Allen J. Ross, D.O. (hereinafter "Respondent"), was authorized to practice medicine in New York State on February 19, 1962 by the issuance of license number 087367 by the New York State Education Department. Respondent is not currently registered to

practice medicine with the New York State Education Department.
(Pet. Ex. #2).

2. On September 11, 1991, the Tennessee Board of Osteopathic Examination (hereinafter "Tennessee Board"), following a hearing, found that Respondent in violation of Tennessee Code Sections 63-9-111 (a)(1) (unprofessional, dishonorable or unethical conduct), (a)(4) (repeated malpractice, negligence or incompetence), and (a)(11) (dispensing controlled substances not in good faith). (Pet. Ex. #3).

3. Based upon its findings, the Tennessee Board revoked Respondent's Tennessee medical license. (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 unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that on September 11, 1991, Respondent's license to practice medicine in the state of Tennessee was revoked by the Tennessee Board. The record of the Tennessee proceedings indicate that Respondent was found to have repeatedly dispensed large amounts of controlled substances not in good faith (See, Pet. Ex. #3, Findings of Fact D, G, H and I). In addition, the Tennessee Board reviewed a number of Respondent's medical records

and found that Respondent failed to appropriately treat noted signs, symptoms, physical findings, laboratory results and diagnoses in accordance with the present-day practice of osteopathic medicine. (See, Pet. Ex. #3 - Finding of Fact J).

The Hearing Committee further concluded that Respondent's conduct would constitute professional misconduct under the laws of New York State, if committed in New York. More specifically, the Committee concluded that Respondent's conduct would constitute professional misconduct in violation of New York Education Law Sections 6530 (3) [negligence on more than one occasion], (4) [gross negligence], (5) [incompetence on more than one occasion], and (20) [moral unfitness to practice medicine]. As a result, the Hearing Committee voted to sustain the specification of professional misconduct.

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 found guilty of repeated violations of Tennessee's statutes concerning the prescription of controlled

substances, as well as repeated negligence and incompetence in the practice of medicine. He failed to appear and present any evidence in mitigation. In the absence of such, revocation is the only appropriate sanction.

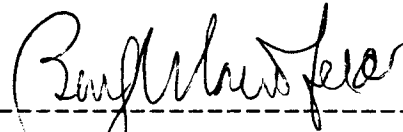
ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1A) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: Albany, New York

November 17, 1993



BENJAMIN WAINFELD, M.D. (Chair)

PHILLIP I. LEVITAN, M.D.
JOHN T. VERNIEU, ESQ.

FC: Denise Lepicier, Esq.
Assistant Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Alan J. Ross, D.O.
721 Walker Spring Road
Knoxville, Tennessee 37902

Steven G. Shope, Esq.
Cruze & Shope
1610 Plaza Tower
Knoxville, Tennessee 37929

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: ALAN J. ROSS, D.O. : PROCEEDING
: :
-----X

TO: ALAN J. ROSS, D.O.
721 Walker Spring Road
Knoxville, Tennessee 37902

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 10th day of November, 1993 at 10:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 29, 1993 .

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before October 29, 1993 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 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: New York, New York

September 21, 1993

A handwritten signature in black ink, appearing to read "C. Stern Hyman", written over a horizontal line.

CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Denise Lepicier
Assistant Counsel
(212) 613-2617

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

-----X
IN THE MATTER : STATEMENT
OF : OF
ALLEN J. ROSS, D.O. : CHARGES
-----X

ALLEN J. ROSS, D.O., the Respondent, was authorized to practice medicine in New York State on February 19, 1962 by the issuance of license number 087367 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

SPECIFICATION

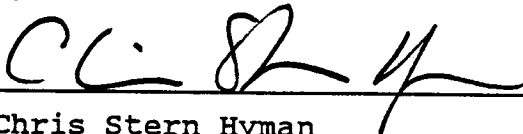
Respondent is charged with professional misconduct, within the meaning of N.Y. Educ. Law Section 6530 (9)(b) and/or (d) (McKinney Supp. 1993), in that he has been found guilty of improper professional practice or professional misconduct and has had other disciplinary action taken against him by the State of Tennessee, on the basis of conduct which would constitute professional misconduct under the laws of the State of New York, including but not limited to, N.Y. Educ. Law Section 6530, Subsections (3), (4), (5), (9)(e) and/or (20)

(McKinney Supp. 1993), had the conduct occurred here, as is hereinafter stated:

1. On September 11, 1991, the Tennessee Board of Osteopathic Examination, conducted a hearing, at which Respondent was represented by counsel, and found Respondent violated Tennessee Code Sections 63-9-111 (a)(1) (unprofessional, dishonorable or unethical conduct), (a)(4) (repeated malpractice, negligence or incompetence), and (a)(11) (dispensing controlled substances not in good faith), recodified as Tennessee Code Sections 63-9-111 (b)(1), (b)(4) and (b)(11), which sections state some of the grounds for disciplinary action against an Osteopathic physician in the State of Tennessee and, accordingly, ordered Respondent's license revoked.

DATED: New York, New York

September 21, 1993


Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct