



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 21, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David William Bishop, M.D.
1715 Forest Avenue
Durango, Colorado 81301

David William Bishop, M.D.
1800 East 3rd Avenue
Durango, Colorado 81301

Mr. Robert Bogan, Esq.
New York State Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237-0032

RE: In the Matter of David William Bishop, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-240) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

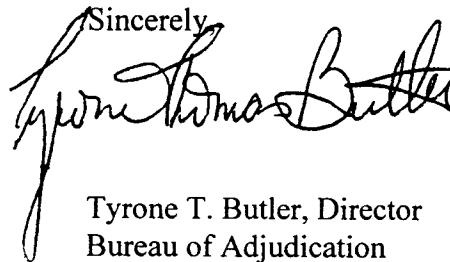
All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

DAVID WILLIAM BISHOP, M.D

DETERMINATION

AND

ORDER

ORDER #99-240

A Notice of Referral Proceeding and Statement of Charges, both dated August 2, 1999, were served upon the Respondent, **DAVID WILLIAM BISHOP, M.D. STEVEN GRABIEC, M.D.** (Chairperson), **MOHAMMAD GHAZI-MOGHADAM, M.D.** and **STEPHEN WEAR**, 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 September 1, 1999. The Department of Health appeared by **HENRY M. GREENBERG**, General Counsel, by **ROBERT BOGAN**, Esq., of Counsel. The Respondent did not personally appear, but submitted documentation 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)(b) 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 April 9, 1962, by the issuance of license number 087469 by the New York State Education Department. Respondent has not been registered to practice medicine in New York state since at least January 1, 1979. (Ex. 3)

2. On or about February 19, 1999, the Colorado Board of Medical Examiners issued a letter of admonition to Respondent based on a determination that his treatment of one patient constituted professional misconduct. The basis for such determination included findings that Respondent:

a. Treated the patient for severe and debilitating pain, but maintained no medical records documenting an examination, evaluation or treatment plan; and

b. An Ophthalmologist, treated the patient for intractable pain while not familiar with guidelines for Prescribing Controlled Substances for such pain; and

c. Failed to obtain a consultation from a physician specializing in pain management; and

d. Prescribed large quantities of narcotics to the patient without performing any follow-up evaluation. (Ex. 4)

3. The action taken by the Colorado Board was reported to the National Practitioner Data Bank. (Ex. A; T. 11)

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 the Department had met its burden of proof by concluding that the preponderance of the evidence demonstrated that Respondent had been found guilty of professional misconduct by an authorized professional disciplinary agency of another state and was disciplined for conduct which, had it occurred in New York, would have constituted

professional misconduct pursuant to New York Education Law §6530(16) [failure to comply with federal, state, or local rules, laws, or regulations] and/or §6530(32) [failing to maintain a record which accurately reflects the evaluation and treatment of a patient]. The Hearing Committee therefore determined to sustain the Specifications set out in the Statement of Charges (Ex. 1). However, the Committee did not find that Respondent's conduct would have constituted a violation of New York Education Law §6530(3) or (5) [practice of the profession with negligence or incompetence on more than one occasion] because the treatment of only one patient was at issue. Therefore, the misconduct occurred on only a single occasion.

DISCUSSION AND DETERMINATION OF PENALTY

The Committee determined that Respondent should be receive no additional penalty from the New York Board. 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 weighed a number of factors in determining that no further penalty was appropriate in this case. The incident involved Respondent's treating the husband of an employee for back pain incurred in a work related accident. Respondent prescribed Tylenol with Codeine for about a seven week period in 1998 without adhering to appropriate guidelines. Respondent indicated to the Colorado Board that he maintained no records of his treatment of the patient. Even though Respondent viewed his care of the patient as informal, the Hearing Committee felt the failure to record the prescribing of a controlled substance to be a significant deviation from acceptable standards of practice.

Respondent's correspondence was reviewed in which he continued to disagree with the conclusions made by the Colorado Board. The Committee felt that any additional penalty would have no impact on his understanding of his failure to meet appropriate standards of practice. However, the Committee considered this misconduct to be a one-time occurrence related to one

patient and not likely to be repeated. It was felt that the action by the authorized professional disciplinary agency of Colorado, the state in which Respondent resides and practices medicine, adequately addressed his error of clinical judgement. The Committee also considered the fact that the action has already been reported to the National Practitioner Data Bank. It was further noted that Respondent has not been registered to practice in New York state since at least 1979, that he wrote that he has not even been in New York since 1963 and that there was no indication that he had any intention to relocate to this State. The citizens of New York have been adequately protected by the action of the Colorado Board and additional penalties were deemed by the Committee to be unnecessary.

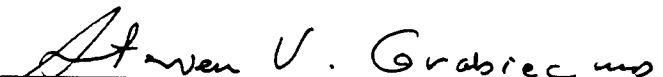
ORDER

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

1. The Specifications contained within the Statement of Charges (Ex. 1) are SUSTAINED, and;
2. NO ADDITIONAL PENALTY be imposed on Respondent, and;
3. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

Dated: Albany, New York

Sept. 16., 1999


STEVEN GRABIEC, M.D. (Chairperson)

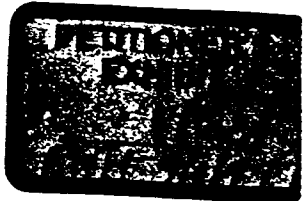
**MOHAMMAD GHAZI-MOGHADAM, M.D.
STEPHEN WEAR**

TO:

Robert Bogan, Esq.
NYS Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
Hedley Park Place-433 River Street, 4th Floor
Troy, New York 12180-2299

David William Bishop, M.D.
1715 Forest Avenue
Durango, Colorado 81301

APPENDIX 1



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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
DAVID WILLIAM BISHOP, M.D. : PROCEEDING

-----X

TO: DAVID WILLIAM BISHOP, M.D.
1715 Forest Ave.
Durango, CO 81301

DAVID WILLIAM BISHOP, M.D.
1800 E. 3rd Ave.
Durango, CO 81301

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 1st day of September, 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. 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 August 23, 1999.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you must 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 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 papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before August 23, 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
August 2, 1999

Peter D. Van Buren

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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518) 402-0820

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

-----X

IN THE MATTER : STATEMENT
OF : OF
DAVID WILLIAM BISHOP, M.D. : CHARGES

-----X

DAVID WILLIAM BISHOP, M.D., the Respondent, was authorized to practice medicine in New York State on April 9, 1962 by the issuance of license number 087469 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 18, 1998, the Colorado Board of Medical Examiners, (hereinafter "Colorado Board"), administered a letter of admonition to the Respondent, based on a determination that Respondent's care and treatment of a patient constituted unprofessional conduct in that he kept no medical records for a patient, that even though he is an Opthamologist, he treated a patient for intractable pain while not familiar with the Guidelines for Prescribing Controlled Substances for such pain, that he failed to obtain a consultation from a physician specializing in pain management, and that he prescribed a large quantity of narcotics to a patient without performing any follow-up evaluation.

B. The conduct resulting in the Colorado 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(5) (incompetence on more than one occasion);
3. New York Education Law §6530(16) (failure to comply with federal, state, or local rules, laws, or regulations); and/or
4. New York Education Law §6530(32) (failing to maintain a record).

SPECIFICATIONS

FIRST 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;

1. The facts in paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by reason of having had disciplinary action taken against him 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:

2. The facts in paragraphs A and/or B.

DATED: *August 2*, 1999
Albany, New York

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