

DOH STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

September 11, 1995

RECEIVED

SEP 11 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Paul Stein, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

Arthur K. Hoffman, Esq.
David S. Tannenbaum, Esq.
Duane, Morris & Heckscher, Esqs.
305 N. Front Street
P.O. Box 1003
Harrisburg, Pennsylvania 17108

Paul Lee Sutton, M.D.
104 Charlene Drive
Danville, Pennsylvania 17821

RE: In the Matter of Paul Lee Sutton, M.D.

Effective Date: 09/18/95

Dear Mr. Stein, Mr. Hoffman and Dr. Sutton:

Enclosed please find the Determination and Order (No. 95-216) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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 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 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.

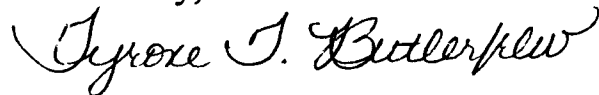
The notice of review served on the Administrative Review Board should be forwarded to:

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

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

**IN THE MATTER
OF
PAUL LEE SUTTON, M.D.**

**DETERMINATION
AND
ORDER**

A Notice of Hearing and Statement of Charges both dated May 18, 1995, were served upon the Respondent, **PAUL LEE SUTTON, M.D.** **WILLIAM P. DILLON, M.D., (Chair), JAMES B. EISENKRAFT, M.D.,** and **BARRY N. KRIESBERG,** 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. **CHRISTINE C. TRASKOS, ESQ.,** Administrative Law Judge, served as the Administrative Officer. A hearing was held on July 6, 1995 at the offices of the NYS Department of Health, Metropolitan Regional Office, 5 Penn Plaza, New York, New York. The Department of Health appeared by **PAUL STEIN, ESQ.,** Associate Counsel. The Respondent appeared by **DUANE, MORRIS & HECKSCHER, ESQS., ARTHUR K. HOFFMAN, ESQ. & DAVID S. TANNENBAUM, ESQ.** of 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) (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. Respondent was authorized to practice medicine in New York State on July 1, 1976 by the issuance of license number 127595 by the New York State Education Department.
(Pet. Ex. #2)
2. On or about August 31, 1993, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine (hereinafter referred to as "the Board") issued a Notice and an Order to Show Cause alleging that Respondent had violated the Pennsylvania Medical Practice Act of 1985 at 63 P.S. secs. 422.41(6) and 422.41(8)(ii) and the Regulations of the Board at 49 Pa. Code secs. 16.92 and 16.95, in that between March 24, 1988 and May 22, 1992, Respondent had unjustifiably written numerous prescriptions for controlled drugs for his wife, who suffered from headaches, without timely examination and diagnosis and without the keeping of medical records. (Pet. Exs. 3D and 3E)

3. On or about April 26, 1994, the Board of Medicine issued an Order (based upon consideration of a Consent Agreement between Respondent and the Board executed on or about February 14, 1994): finding that Respondent had violated the Pennsylvania Medical Practice Act; and requiring that Respondent undergo and successfully complete continuing medical education in the form of forty-five hours of courses in the proper prescribing of controlled dangerous substances, within one year of the date of the Order.

(Pet. Exs. 3B and 3C)

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 Committee concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates that Respondent entered into a Consent Agreement on or about February 14, 1994 in which he admitted that as a pediatric physician, he had been prescribing a number of scheduled medications for his wife from March 1988 to May 1992, without maintaining proper medical records.

Education Law Section 6530(9)(d) defines professional misconduct in part as having disciplinary action taken against his or her license... "after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State." As a result, the Hearing Committee voted to sustain the First Specification of professional misconduct contained within the Statement of Charges.

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 suspended for two (2) years following the effective date of this Determination and Order. The suspension shall be stayed, and Respondent shall be placed on probation. The complete terms of probation are attached to this Determination and Order in Appendix II. 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.

The record establishes that Respondent committed significant violations of the State of Pennsylvania statutes regulating the prescribing, administering and dispensing of controlled substances. (Pet. Ex. 4) Such misuse of controlled substance privileges has the potential of placing patients in grave risk of harm even if its intent is to assist a relative in pain. The Hearing Committee has an independent responsibility for determining the sanction to be imposed upon Respondent's New York medical license, due to his misconduct.

In this instance, Respondent prescribed controlled substances for his wife's migraine headaches and fibromyalgia. (T. 24) Respondent, however, testified that he is no longer involved in the medical care of his wife. (T. 39-40) Respondent also successfully completed a mini-residency in the "Proper Prescribing of Controlled Dangerous Substances." (Resp. Exs. E and F) The Hearing Committee believes that Respondent has been totally rehabilitated by the experience of placing his license in jeopardy and through the continuing education he completed pursuant to the Consent Agreement with the Pennsylvania Board of Medicine.

Therefore, the Hearing Committee determined that the two (2) year suspension with general probation is the appropriate sanction under the circumstances.

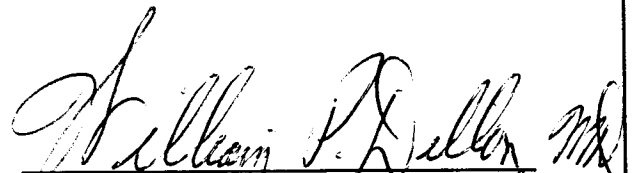
ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is SUSTAINED, and
2. Respondent's license to practice medicine in New York State be and hereby is SUSPENDED for a period of two (2) years from the effective date of this Determination and Order. The suspension shall be stayed; and Respondent shall be placed on probation in accordance with the terms of probation contained in Appendix II which is attached to this Determination and Order and incorporated herein.

DATED: Buffalo, New York

9/8 1995


WILLIAM P. DILLON, M.D., (Chair)

JAMES B. EISENKRAFT, M.D.
BARRY N. KRIESBERG



TO: Paul Stein, Esq.
Associate Counsel
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

Arthur K. Hoffman, Esq.
David S. Tannenbaum, Esq.
Duane, Morris & Heckscher, Esqs.
305 N. Front Street
P.O. Box 1003
Harrisburg, Pennsylvania 17108

Paul Lee Sutton, M.D.
104 Charlene Drive
Danville, PA 17821

APPENDIX I

IN THE MATTER
OF
PAUL LEE SUTTON, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: PAUL LEE SUTTON, M.D.
104 Charlene Drive
Danville, PA 17821

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on ~~June 29~~ ^{July 6th}, 1995, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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.

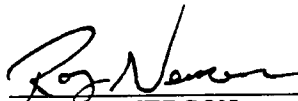
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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: New York, New York
May 18, 1995



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Paul Stein
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2605

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

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In the Matter : STATEMENT
of : OF
PAUL LEE SUTTON, M.D. : CHARGES

-----x

PAUL LEE SUTTON, M.D., the Respondent, was authorized to practice as a physician in New York State on July 1, 1976 by the issuance of license number 127595 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. 1. On or about August 31, 1993, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine (hereinafter referred to as "the Board") issued a Notice and an Order to Show Cause alleging that Respondent had violated the Pennsylvania Medical Practice Act of 1985 at 63 P.S. secs. 422.41(6) and 422.41(8)(ii) and the Regulations of the Board at 49 Pa. Code secs. 16.92 and 16.95, in that between March 24, 1988 and May 22, 1992, Respondent had unjustifiably written numerous prescriptions for controlled drugs for his wife, who suffered from headaches, without timely examination and diagnosis and without the keeping of medical records.
2. On or about April 26, 1994, the Board of Medicine issued an Order (based upon consideration of a Consent Agreement

between Respondent and the Board executed on or about February 14, 1994): finding that Respondent had violated the Pennsylvania Medical Practice Act; and requiring that Respondent undergo and successfully complete continuing medical education in the form of forty-five hours of courses in the proper prescribing of controlled dangerous substances, within one year of the date of the Order.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN BY A DULY AUTHORIZED PROFESSIONAL DISCIPLINARY AGENCY OF ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law sec. 6530(9)(d) (McKinney Supp. 1995), in that he had his license to practice medicine revoked, suspended or had 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 revocation, suspension or other disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely:

- a. Practicing the profession with negligence on more than one occasion (N.Y. Educ. Law sec. 6530 (3) (McKinney Supp. 1995)); and/or

- b. Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (N.Y. Educ. Law sec. 6530 (32) (McKinney Supp. 1995)),

as Petitioner specifically alleges:

1. The facts in Paragraph A1 and A2.

Dated: New York, New York
May 18, 1995



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

TERMS OF PROBATION

1. Dr. Sutton shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Dr. Sutton shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Sutton shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. Dr. Sutton's probation shall be supervised by the Office of Professional Medical Conduct.
5. Dr. Sutton shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Sutton's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.
6. Dr. Sutton shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.
7. Dr. Sutton shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Sutton elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.
8. If there is full compliance with every term set forth herein, Dr. Sutton may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Sutton pursuant to New York Public Health Law Section 230(19) or any other applicable laws.