



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

RECEIVED
AUG 14 1995

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

Karen Schimke
Executive Deputy Commissioner

August 11, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frederick Zimmer, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Glen Dopf, Esq.
Kopf Nardelli and Dopf
440 Ninth Avenue
New York, New York 10001-1688

Jay Henry Vanden Bosch, M.D.
8600 S.W. 92nd Street-Suite 202
Miami, Florida 33156-7377

RE: In the Matter of Jay Henry Vanden Bosch, M.D.

Effective Date: 09/18/95

Dear Mr. Zimmer, Mr. Dopf and Dr. Vanden Bosch:

Enclosed please find the Determination and Order (No. 95-173) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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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.

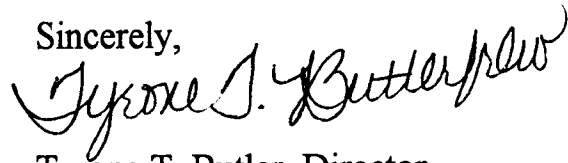
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, sweeping initial "T".

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-
JAY HENRY VANDEN BOSCH, M.D.

Respondent

DECISION

AND

ORDER

OF THE

HEARING

COMMITTEE

BPMC ORDER NO. 95- 173

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated March 24, 1995 which were served upon **JAY HENRY VANDEN BOSCH, M.D.**, (hereinafter referred to as "Respondent"). **TERESA S. BRIGGS, M.D., Ph.D.**, Chairperson, **DAVID T. LYON, M.D., M.P.H.**, and **D. MARISA FINN**, 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 July 12, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "The State" or "Petitioner") appeared by **JEROME J. JASINSKI, Esq.**, Acting General Counsel, **FREDERICK ZIMMER, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct, of counsel. Respondent appeared in person and by Kopf Nardelli and Dopf, **GLEN DOPF, ESQ.**, of counsel. Evidence was received. Legal arguments were heard. A transcript of these proceedings was made. The parties were given an opportunity to submit written closing arguments.

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 Education Law Section 6530(9). 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 upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9)(d) (disciplinary action taken by the authorized disciplinary agency of another state, where the activity upon which the discipline was based would amount to misconduct in this state). The charge herein arises from a Consent Agreement between Respondent and the Florida State Board of Medical Examiners. The Consent agreement arises from an allegation that Respondent inappropriately prescribed medications to one individual. The allegations of the Florida authorities 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 statement set forth on pages one through three of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS

Respondent in this action has practiced medicine for many years and has enjoyed a superior career in his home state of Florida. His wife is a practicing psychologist who also has exemplary credentials. There came a time when Respondent prescribed medication, at the request of his wife, to a patient under the care of his wife. The person to whom the medications were prescribed was not a patient under Respondent's primary care. The Florida authorities found acts of medical misconduct and, with the agreement of Respondent, imposed a sanction of a \$3,000 fine plus a quality assurance review of Respondent's office records, 20 hours of continuing medical education and a drug abuse course.

The Committee considers this an appropriately lenient sentence which was commensurate with the infraction. Moreover, from the leniency of the sentence the Committee concludes that they are of one mind with the authorities in the state in which Respondent practices: That is, both the Florida authorities and this Committee find the violation to be *de minimus*.

At the close of the state's case, the Committee found that Respondent posed no threat to the people of this state and that the sanctions imposed by Florida were entirely sufficient to warrant no punitive action in this state. Nevertheless, Respondent elected to testify. Respondent's direct testimony and his response to cross-examination served to bolster the earlier findings by the Committee. The Committee was favorably impressed with Respondent's forthright presentation and his overall demeanor. The Committee was further impressed with the quality of this practitioner's work over a lengthy career and the overall high standards represented by him. The Committee notes that Respondent has no present intention to practice in this state. At this point in Respondent's career, it is extremely unlikely that he will ever practice medicine outside the state of Florida. Notwithstanding these facts, Respondent chose to undergo the expense and effort to come to Albany to defend against these charges. The Committee is convinced that the dedication of resources exhibited by Respondent in this endeavor is directly proportionate to the importance he places upon his professional reputation. Indeed it could fairly be said that Respondent defines himself through what he deems to be the privilege of practicing medicine. Respondent elected to come to this state to defend his reputation and the privilege to practice medicine, notwithstanding practical considerations which might mitigate against the costs. This body believes that such dedication and exceedingly high professional standards should be recognized and encouraged.

Based upon all the circumstances presented, the Committee finds that no further action should be taken against Respondent by this state. Under the concept of Collateral Estoppel and the specific wording of the charges, the Committee must find that the factual allegations are sustained and that the Florida action constitutes misconduct in this state. However, there is no rule which requires the Committee to impose any penalty of any kind.

ORDER

WHEREFORE, Based upon the forgoing facts and conclusions,

IT IS HEREBY ORDERED THAT:

- 1. The Factual allegations in the Statement of Charges 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. **NO ACTION OF ANY KIND** be taken against the license of Respondent to practice medicine in this state

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:
Albany, New York**

August 10 1995

Teresa S. Briggs, PhD
TERESA S. BRIGGS, M.D., Ph. D., Chairperson

**DAVID T. LYON, M.D., M.P.H.
D. MARISA FINN**

TO: **FREDERICK ZIMMER, ESQ.**
Assistant Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

GLEN DOPF, ESQ.
Kopf Nardelli and Dopf
440 Ninth Ave.
New York, N.Y. 10001-1688

JAY HENRY VANDEN BOSCH, M.D.
8600 S.W. 92nd Street Suite 202
Miami, Florida 33156-7377

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
JAY VANDEN BOSCH, M.D. : PROCEEDING

-----X

TO: Jay Vanden Bosch, M.D.
8600 S.W. 92 Street
Suite 202
Miami, Fl. 33156-7377

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. 1995) and N.Y. State Admin. Proc. Act Sections 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 the 3rd day of May, 1995 at 10:00 a.m. in the forenoon of that day at The Cultural Education Center, Room E, Concourse Level, Empire State Plaza, Albany, New York 12237.

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

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Petitioner's
Exhibit

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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, on or before - April 24, 1995, 1995.

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 April 24, 1995, 1995 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 24, 1995

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

Inquiries should be addressed to:

Elizabeth C. Hogan
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
JAY VANDEN BOSCH, M.D. : CHARGES

-----X

JAY VANDEN BOSCH, M.D., the Respondent, was authorized to practice medicine in New York State on June 29, 1955 by the issuance of license number 076632 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. The Florida State Board of Medical Examiners, by Final Order dated December 23, 1993 and pursuant to a Consent Agreement dated October 28, 1993 and Complaint dated February 11, 1993, took disciplinary action against Respondent. The Board imposed a \$3,000.00 fine ordered a quality assurance review of Respondent's office records, ordered 20 hours of Continuing Medical Education and a drug abuse course.

2. The conduct underlying the Florida Board's imposition of discipline upon Respondent as set forth in the Complaint was the prescribing to Patient #1 a combination of medications including Xanax, Trivial and Elavil on twenty seven different occasions during the period July, 1987 through February, 1989 without obtaining a medical history, performing a physical exam

or lab tests on Patient #1 and failing to monitor the patient appropriately while prescribing such a combination of medications. These medications were delivered to the patient through a psychologist. The above conduct is a violation of Florida Statutes §458.331(1)(t) [gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances]; Florida Statutes §458.331(1)(q) [prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice]; Florida Statutes §458.31(1)(w) [delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience or licensure to perform them]; Florida Statutes §458.331(1)(f) [aiding, assisting, procuring, or advising any unlicensed practice of medicine]. Further conduct was the failure to keep adequate medical records for Patient #1 in violation of Florida Statutes §458.331(1)(m).

3. The conduct underlying the Florida Board's imposition of discipline, would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(3) [practicing the profession with negligence on more than one occasion]; and/or N.Y. Educ. Law §6530(4) [practicing the profession with gross negligence on a particular occasion]; and/or §6530(11) [permitting, aiding, or abetting an unlicensed person to perform activities requiring a license]; and/or N.Y. Educ. Law §6530(32)

[failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient]; and/or N.Y. Educ. Law §6530(33) [failure to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee].

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1995) by reason of having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his 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 in that Petitioner charges:

1. The facts in Paragraphs 1, 2 and 3.

DATED: *March 24*, 1995
Albany, New York

Peter D. Van Buren

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