



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., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 21, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Henry Wagner, Jr., M.D.
5804 Bayshore Boulevard
Tampa, Florida 33611-4767

Henry Wagner, Jr., M.D.
H. Lee Moffett Cancer Center
Thoracic Oncology Program
12909 Magnolia Drive
Tampa, Florida 33610-9416

Barry A. Gold, Esq.
90 State Street, Suite 1500
Albany, New York 12207-1751

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
433 River Street – 4th Floor
Troy, New York 12180

RE: In the Matter of Henry Wagner, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-215) of the Professional Medical Conduct Administrative Review Board 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is fluid and cursive, with the first name "Tyrone" being more prominent.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah

Enclosure

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

COPY

In the Matter of

Henry Wagner, Jr., M.D. (Respondent)

Administrative Review Board (ARB)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Determination and Order No. 00-215

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):
For the Respondent:**

**Paul Robert Maher, Esq.
Barry A. Gold, Esq.**

After a hearing below, a BPMC Committee found the Respondent liable for disciplinary action against his New York Medical License (License), due to two misdemeanor convictions in Florida for driving under the influence. The Committee placed a condition on his License and placed the Respondent on probation should he return to New York to practice medicine, but the Committee's Order stated that they took no action against the License. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2000), the Petitioner asks the ARB to modify the Determination to require that a treatment program from Florida provide New York with reports on the Respondent's compliance with the treatment program. Upon considering the record and the briefs by the parties, we find that the Respondent has already taken action to assure that New York will receive progress reports from the Florida treatment program. We amend the Committee's Determination, however, to note that the Committee had taken action against the Respondent's License through the condition and the possible probation.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law § 6530(9)(a)(iii)(McKinney Supp. 2000) by engaging in conduct in another state that 1.) resulted in his criminal conviction and that 2.) would constitute criminal conduct under New York Law. At a hearing on that charge before a BPMC Committee, the evidence proved the Respondent's conviction for driving under the influence/property damage, a misdemeanor, in Hillsborough County Florida on April 22, 1997. The evidence proved further the Respondent's conviction for driving under the influence, a misdemeanor, in Hillsborough County Florida on October 1, 1999.

The Committee concluded that the Respondent's convictions in Florida made the Respondent liable for disciplinary action against his License pursuant to Educ. Law § 6530(9)(a)(iii). The Committee found evidence in the record concerning the Respondent's history for alcoholism, a ten-year abstinence and his relapse in 1996 and 1999. The Committee also found that the Respondent currently participates actively and successfully in the Florida Physicians Recovery Network (PRN) and complies completely in the requirements under his August 1998 Monitoring Contract. That contract's requirements include random toxicology screening, weekly PRN monitored groups, individual psychotherapy and involvement in a twelve-step recovery program. The Committee concluded that the Respondent poses no threat to the public health and that the Respondent possesses the ability to make positive contributions in his medical specialty.

The Committee's Determination states that "the interests of justice and medicine can best be served by refraining from taking any action against the Respondent's New York Medical License". The Committee ordered, however, that if the Respondent chose to return to practice in New York State, he would serve five years probation under terms and conditions that the Committee enumerated in their Order. Those conditions included advance notice to the Office for Professional Medical Conduct (OPMC) concerning his return to New York and enrolling in the Committee for Physicians' Health upon his return.

Review History and Issues

The Committee rendered their Determination on August 2, 2000. This proceeding commenced on August 14, 2000, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief, the Respondent's response brief, a letter to the parties from our Administrative Officer requesting clarification on an issue and a clarification letter from the Petitioner. The record closed when the ARB received the Petitioner's clarification letter on November 1, 2000.

The Petitioner's brief requested more stringent restrictions upon the Respondent. The Petitioner noted that prior to any possible return to New York practice, the Respondent must participate in the PRN Program in Florida. The Petitioner argued that New York would receive no reports on the Respondent's progress and would remain unaware if the Respondent suffered a further relapse and failed to adhere to the PRN Program. The Petitioner requested that the ARB amend the Committee's Determination to require that PRN provide reports to OPMC on the Respondent's progress until such time as the Respondent should return to New York.

In reply, the Respondent's counsel indicated that the Respondent had given irrevocable consent for PRN to provide periodic reports on the Respondent's progress to OPMC. The Respondent's brief attached a letter from PRN that indicated that the Respondent had "irrevocably requested" that PRN provide progress reports to OPMC. That letter also indicated that, if the Respondent ever became non-compliant with the PRN Program, PRN would notify OPMC. The Respondent argued that the PRN letter accomplished the relief that the Petitioner requested and asked that the ARB dismiss the Petitioner's appeal as moot.

After our initial deliberations in this matter, the ARB instructed our Administrative Officer to contact the parties by mail and ask for clarification on the PRN letter. The Administrative Officer's October 24, 2000 letter to the parties asked whether the PRN letter meant that:

- 1.) PRN would provide information to OPMC only if the Respondent became non-compliant, or,
- 2.) PRN would provide regular summaries to OPMC and would also notify OPMC if the Respondent became non-compliant?

By letter on October 30, 2000, the Petitioner's counsel indicated that Petitioner took the position that the PRN letter meant that PRN would provide quarterly summaries to OPMC and would also notify OPMC if the Respondent became non-compliant.

Determination

.. The ARB has considered the record and the parties' briefs. We vote unanimously to modify the wording in the Committee's Order. We affirm the Committee's Determination to place a restriction on the Respondent's License and to place the Respondent on probation, should the Respondent return to practice in New York.

The Petitioner's brief argued that the Committee's Order failed to provide for any observation over the Respondent's compliance with the PRN Program while the Respondent remained in Florida. The Respondent proposed to correct that issue through an ARB Order to PRN to provide regular reports to OPMC. The ARB points out to the Petitioner that we lack jurisdiction to tell PRN to do anything. The ARB holds jurisdiction in this proceeding over the

Respondent and his New York Medical License. To correct the issue, the ARB would have ordered the Respondent to guarantee that PRN provide such reports. The Respondent had already given the consent for such reports by the time this issue came before the ARB and the Petitioner has now indicated that the PRN letter provides for the regular reports that the Petitioner's review brief requested.

Although the Respondent's action and the PRN letter have settled the issue the Respondent raised for review, the ARB found a mistake in the Committee's Determination that we will correct in this Determination. The Committee stated incorrectly, at page 6 in their Determination, that they took no action against the Respondent's License. The ARB holds that the Committee did take action by 1.) placing a condition on the Respondent's License that he notify New York ninety days before any return to medical practice in New York, and, 2.) placing the Respondent on probation for five years upon the return to New York. Neither party raised this issue in their briefs to the ARB, but under our review authority, the ARB may amend a Committee Determination on our own motion, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). We modify the Committee's Determination to provide that the Committee's Order placed a condition on the Respondent's New York Medical License, requiring the Respondent to provide notice to OPMC if the Respondent planned to return to practice and placing the Respondent on probation for five years upon such return.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

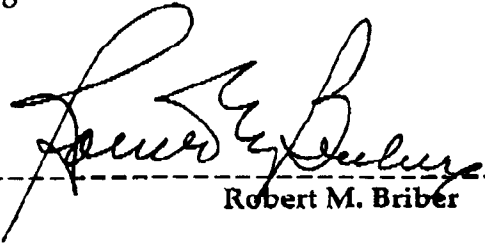
1. The ARB **AFFIRMS** the Committee's Determination that found the Respondent liable for disciplinary action against his New York Medical License.
2. The ARB **MODIFIES** the Determination to provide that the Committee took action against the Respondent's New York License, by placing a condition on the License and by placing the Respondent on probation in the event the Respondent chooses to return to medical practice in New York.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Henry Wagner, M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Wagner.

Dated: November 8, 2000

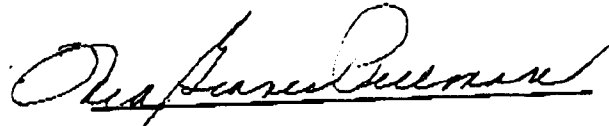


Robert M. Briber

In the Matter of Henry Wagner, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Wagner.

Dated: Nov. 8, 2000

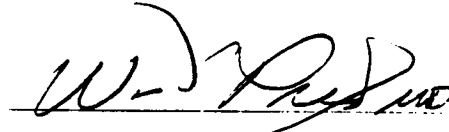
A handwritten signature in cursive script, appearing to read 'Thea Graves Pellman', written over a horizontal line.

Thea Graves Pellman

In the Matter of Henry Wagner, M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Wagner.

Dated: NOV 15, 2000

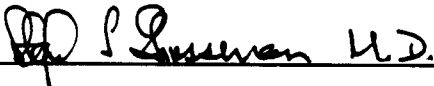
A handwritten signature in black ink, appearing to read "W. S. Price, M.D.", written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Henry Wagner, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Wagner.

Dated: November 17, 2000

_____

Stanley L Grossman, M.D.

In the Matter of Henry Wagner, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Wagner.

Dated: Nov. 7, 2000

Therese G. Lynch M.D.

Therese G. Lynch, M.D.



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 2, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Henry Wagner, Jr., M.D.
5804 Bayshore Boulevard
Tampa, Florida 33611-4767

Henry Wagner, Jr., M.D.
H. Lee Moffett Cancer Center
Thoracic Oncology Program
12909 Magnolia Drive
Tampa, Florida 33610-9416

Barry A. Gold, Esq.
90 State Street, Suite 1500
Albany, New York 12207-1751

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
433 River Street – 4th Floor
Troy, New York 12180

RE: In the Matter of Henry Wagner, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-215) 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.

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.

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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is fluid and cursive, with the first name "Tyrone" being more prominent.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC #00-215

**IN THE MATTER
OF
HENRY WAGNER, JR., M.D.**

A Notice of Referral Proceeding and Statement of Charges, both dated, April 10, 2000, were served upon the Respondent, **HENRY WAGNER, JR., M.D.**

EDWARD SINNOTT, M.D., Chairperson, **HOWARD SOHNEN, M.D.** and **MICHAEL GONZALEZ, R.P.A.**, duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on June 19, 2000, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **THUILLEZ, FORD, GOLD & JOHNSON, LLP.**, 90 State Street, Suite 1500, Albany, New York, NY 12207-1751 by **Barry A. Gold, ESQ.**, of Counsel.

Evidence was received and transcripts of these proceeding 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 case, 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(iii). A copy of the Notice of Referral Proceeding and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Henry Wagner, Jr., M.D.,
the Respondent
John C. Ruckdeschel, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **HENRY WAGNER, JR., M.D.**, the Respondent, was authorized to practice medicine in New York state on July 10, 1987, by the issuance of license number 170921 by the New York Education Department. (Pet's. Ex. 3).

2. On April 22, 1997, in the County Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, the Respondent was convicted of Driving Under the Influence/Property Damage, a misdemeanor, in violation of §316.193 of the Florida Statute. The Respondent was fined \$781.00 and costs; his driver's license was revoked for six (6) months; and he was ordered to attend DWI School and to perform fifty (50) hours of community service. (Pet's. Ex. 4).

3. On October 1, 1999, in the Hillsborough County Traffic Court, Tampa, Florida, the Respondent was convicted of Driving Under the Influence, a misdemeanor, in violation of §316.193 of the Florida Statute, and was sentenced to ten (10) days jail; an inpatient rehabilitation program; DWI School, a five (5) year revocation of his driver's license, and fined \$346.00 and costs. (Pet's. Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent is charged with professional misconduct by reason of having violated New York State Education Law §6530(9)(a)(iii) by having been convicted of committing an act which if committed in New York would have constituted a crime under New York state law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Respondent has a history of alcoholism. In 1996, after a ten-year abstinence, he had a relapse and was convicted of Driving Under the Influence/Property Damage. He had a second relapse in 1998 and was convicted of Driving Under the Influence/Property Damage.

The Respondent is currently an active and successful participant in the Florida Physicians Recovery Network (PRN). He is in complete compliance with all requirements of his Monitoring Contract established in August of 1998, including random toxicology screening, weekly PRN monitored groups, individual psychotherapy and involvement in a 12-step program of recovery.

The Respondent is currently employed by the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida, Tampa, Florida. He holds the position of Associate Professor of Radiology and is recognized as one of the foremost Lung Cancer Radiation Oncologists in the world. He has published 35 original articles, 53 abstracts and 10 book chapters on his medical specialty and he is currently the Chairman of the Radiotherapy Committee of the Eastern Cooperative Oncology Group.

The Respondent does not have a Florida medical license. He does have a special permit from the Florida Board, which allows him to practice medicine at a medical teaching facility in that state. Apparently this is a procedure, which the state of Florida employs, to attract world class specialists by avoiding the usual burdensome process of licensure.

The Respondent needs to maintain his New York State medical license because he participates in some projects with the Veterans Administration Hospital which requires that he possess a state medical license. Because of this requirement, any adverse action against the Respondent's New York medical license could lead to very serious unintended consequences regarding his medical career and research.

The Hearing Committee was very impressed by the Respondent's candor and sincerity, his admission of past mistakes and his efforts to rehabilitate himself.

The Respondent is a relatively young man, he is 51 years old, and the Hearing Committee feels that he still has the ability to make positive contributions in the field of Radiation Oncology.

The Respondent does not present a threat to the health of the people of the State of New York and he is being closely monitored by the Florida Physicians Recovery Network and also at the Moffitt Center where he is employed.

Under the circumstances of this case, the Hearing Committee determines that the interests of justice and medicine can best be served by refraining from taking any action against the Respondent's New York medical license.

If at some future date the Respondent should decide to return to medical practice in New York, he should be put on probation for five (5) years under terms and conditions as hereinafter specified in the Order.

ORDER

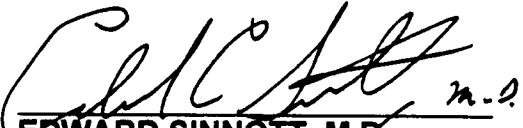
IT IS HEREBY ORDERED THAT:

1. No action is taken against the Respondent's license to practice medicine in New York state.
2. If, at some future date, the Respondent chooses to return to practice in New York he must:
 - provide ninety days prior notice concerning his return to the Office of Professional Medical Conduct,
 - Respondent shall enroll in the Committee for Physicians' Health (CPH) and shall engage in a contract with CPH, which fully describes the terms, conditions and duration of a program to assist the Respondent in the rehabilitation of his impairment. Respondent shall fully comply with the contract.
 - Respondent shall provide a written authorization for CPH to provide to the Director OPMC with any/all information of documentation requested by OPMC to determine whether Respondent is in compliance with the contract.

- CPH shall report to OPMC if Respondent refuses to comply with the contract, refuses to submit to treatment or whose impairment is not substantially alleviated by treatment. CPH shall report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.
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: *Somers*, New York

July 27, 2000


EDWARD SINNOTT, M.D.
Chairperson

HOWARD SOHNEN, M.D.
MICHAEL GONZALEZ, R.P.A.

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

**IN THE MATTER
OF
HENRY WAGNER, JR., M.D.**

**NOTICE
OF
REFERRAL
PROCEEDING**

**TO: HENRY WAGNER, JR., M.D.
5804 Bayshore Blvd.
Tampa, Florida 33611-4767**

**HENRY WAGNER, JR., M.D.
H. Lee Moffett Cancer Center
Thoracic Oncology Program
12909 Magnolia Drive
Tampa, Florida 33610-9416**

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 18th day of May, 2000 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 May 8, 2000.

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 May 8, 2000 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
April 10, 2000



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

IN THE MATTER
OF
HENRY WAGNER, JR., M.D.

STATEMENT OF
CHARGES

HENRY WAGNER, JR., M.D., the Respondent, was authorized to practice medicine in New York state on July 10, 1987, by the issuance of license number 170921 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 22, 1997, in the Florida, County Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Respondent was convicted of Driving Under the Influence/Property Damage, a misdemeanor, in violation of §316.193 of Florida Statute and sentenced to a \$781.00 fine and costs, six (6) months license revocation, fifty (50) hours community service, and DWI School.

B. On or about October 1, 1999, in the Hillsborough County Traffic Court, Tampa, Florida, Respondent was convicted of Driving Under the Influence, a misdemeanor, and sentenced to ten (10) days jail, inpatient rehabilitation program, DWI School, five (5) year revocation of his driver's license, and \$346.00 fine and costs.

SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York state Education Law §6530(9)(a)(iii) by having been convicted of committing an act which if committed in New York would have constituted a crime under New York state law, in that Petitioner charges:

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

DATED: *Apr. 10*, 2000
Albany, New York


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