

# **DOH** STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen  
*Executive Deputy Commissioner*

October 3, 1997

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jude Mulvey, Esq.  
NYS Department of Health  
Corning Tower Room 2503  
Empire State Plaza  
Albany, New York 12237

Richard Wagner, M.D.  
RD 1 P.O. Box 84b  
Belle Vernon, PA 15012-9801

**RE: In the Matter of Richard Wagner, M.D.**

Dear Ms. Mulvey and Dr. Wagner:

Enclosed please find the Determination and Order (No. 97-239) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

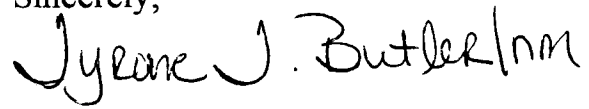
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler/nm". The signature is written in a cursive style, with the first name "Tyrone" and last name "Butler" clearly legible, followed by a forward slash and the initials "nm".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
RICHARD WAGNER, M.D.**

**DETERMINATION  
AND  
ORDER**

BPMC-97-239

**JOHN P. FRAZER, M.D.**, Chairman, **WALTER M. FARKAS, M.D.** and **MR. MICHAEL WALKER**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230 (1) of the Public Health Law, 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.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

**SUMMARY OF THE PROCEEDINGS**

Notice of Hearing and  
Statement of Charges:

July 25, 1997

Pre-Hearing Conference:

September 10, 1997

Hearing Date:

September 18, 1997

Place of Hearing:

Legislative Office Building  
Empire State Plaza  
Albany, New York

Date of Deliberations:

September 18, 1997

Petitioner appeared by:

Henry M. Greenberg, Esq.  
General Counsel  
NYS Department of Health  
By: Jude Mulvey, Esq., of Counsel

Respondent appeared by:

The Respondent failed to appear.

### **WITNESSES**

For the Petitioner:

Constance Lopez

For the Respondent:

NONE

### **STATEMENT OF CHARGES**

Essentially the Statement of Charges charges the Respondent with Practicing the Profession Fraudulently and with Moral Unfitness.

The Charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

### **FINDINGS OF FACT**

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 specified.

## GENERAL FINDINGS

1. The Respondent **RICHARD WAGNER, M.D.** is a physician duly licensed to practice medicine in the State of New York under license number 133565 issued by the State Education Department on February 3, 1978.
2. The Respondent's medical staff privileges at Warren General Hospital, Pittsburg, Pennsylvania, were summarily suspended on November 21, 1983 pursuant to the provisions of the Medical Staff Bylaws, and after a hearing by the Medical Staff Review Committee, those privileges were permanently revoked, effective April 30, 1985 (Pet's. Ex. 7).
3. On August 14, 1985, the Ohio State Medical Board (hereinafter "Ohio Board") proposed to deny the Respondent's application for licensure because of fraud, misrepresentation and deception in his application. The untruth pertained to loss of hospital staff privileges. The Ohio Board also concluded that the Respondent's conduct constituted a lack of good moral character. Although the Respondent requested a hearing to contest the Board's proposed action, he defaulted and failed to appear on two separate occasions. The Ohio Board confirmed its proposed action on June 11, 1986, and the order was entered on or about June 25, 1986. (Pet's. Ex. 5)
4. By Order, dated December 22, 1987, the Respondent's license to practice medicine in the State of New York was **SUSPENDED** for two years, **SUSPENSION STAYED**, and the Respondent was placed on probation for two years under terms prescribed by the Regents Review Committee. This New York action was based on the Ohio Board's Determination. (Pet's. Ex. 5)

5. In March 1994, the Bureau of Professional and Occupational Affairs of the State of Pennsylvania, received a formal complaint of possible mental impairment, unprofessional conduct and improper prescribing on the part of the Respondent.

As a result, an application for involuntary emergency examination and treatment was filed on May 25, 1994 pursuant to the Pennsylvania Mental Health Procedures Act of 1976, Section 302. Also on May 25, 1994, the County Administrator signed the warrant for the Respondent to be examined at Geisinger Medical Center, Bloomsburg Site, for a period of time not to exceed 120 hours.

On May 27, 1994, an application for extended involuntary treatment pursuant to the Pennsylvania Mental Health Procedures Act of 1976, Section 303 was filed, requesting that the Respondent be held for an extended involuntary emergency treatment for a period not to exceed twenty (20) days.

With respect to the hearing conducted in the Court of Common Pleas of Schuylkill County, regarding the Respondent's involuntary treatment and commitment, the Mental Health Review Officer, found that the Respondent was a clear and present danger to others.

Based on the foregoing the Pennsylvania Board of Medicine was required to issue an Order suspending the Respondent's license to practice medicine in the Commonwealth of Pennsylvania.

On June 13, 1994 the Pennsylvania Board of Medicine issued an Order of Automatic Suspension and ordered the Respondent to cease and desist from the practice of medicine in the Commonwealth of Pennsylvania (Pet's. Ex. 4).

6. In approximately late 1994 or early January 1995, the Respondent applied for a locum tenens physician position with Benedictine Hospital, Kingston, New York. The Respondent was interviewed by telephone by Constance Lopez, Administrative Director of Mental Health Services, with regard to his application.

In response to the oral question whether his medical license had ever been disciplined, Respondent answered "no".

In response to the oral question whether he had ever lost privileges at any hospital, Respondent answered "no". (Tr. 16-18, 20)

7. In February, 1995, the Respondent intentionally misrepresented to Benedictine Hospital staff (Constance Lopez) that he had current medical malpractice insurance when, in fact, he was not covered. (Tr. 18-20)

#### **VOTE OF THE HEARING COMMITTEE**

**(All votes were unanimous unless otherwise specified)**

#### **FIRST THROUGH THIRD SPECIFICATIONS**

#### **PRACTICING THE PROFESSION FRAUDULENTLY**

The Respondent is charged with professional misconduct under N.Y. Education Law §6530(2)(McKinney Supp. 1997) by reason of practicing the profession fraudulently.

**VOTE: SUSTAINED (3-0)**



#### **FOURTH SPECIFICATION**

##### **MORAL UNFITNESS**

The Respondent is charged with professional misconduct under N.Y. Education Law §6530(20)(McKinney Supp. 1997) by reason of engaging in conduct in the practice of medicine which evidences moral unfitness to practice medicine.

**VOTE: SUSTAINED (3-0)**

#### **DETERMINATION OF THE HEARING COMMITTEE**

Based on a review of the entire record in this case, the Hearing Committee voted unanimously (3-0) to sustain the specifications charging that the Respondent with practicing the profession fraudulently and with moral unfitness.

The Respondent failed to appear at the hearing. He also failed to submit any documentary evidence for the Hearing Committee to consider in mitigation of the charges.

The Hearing Committee determines unanimously (3-0), that the Respondent's license to practice medicine in the State of New York should be **REVOKED.**

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is **REVOKED**.
2. 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: Rochester, New York**

Sept 30 1997

*John P. Frazer, M.D.*  
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**JOHN P. FRAZER, M.D.**  
Chairman

**WALTER M. FARKAS, M.D.**  
**MR. MICHAEL WALKER**



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

-----X

IN THE MATTER : NOTICE  
OF : OF  
RICHARD WAGNER, M.D. : HEARING

-----X

TO: RICHARD WAGNER, M.D.  
RD 1 PO Box 84b  
Belle Vernon, PA 15012-9801

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 18 day of September, 1997, at 10:00 in the forenoon of that day at the Legislative Office Building, Room 104A, Albany, New York 12230 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and

you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(c) 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 date of the hearing. Any Charge and Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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. 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE BE REVOKED OR  
SUSPENDED, AND/OR THAT YOU BE FINED OR  
SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW  
YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE  
URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU  
IN THIS MATTER.

DATED: Albany, New York  
*July 25*, 1997

  
PETER D. VAN BUREN  
Deputy Counsel

Inquiries should be directed to: Jude Brearton Mulvey  
Assistant Counsel  
Division of Legal Affairs  
Bureau of Professional  
Medical Conduct  
Corning Tower Building  
Room 2503  
Empire State Plaza  
Albany, New York 12237-0032  
(518) 473-4282



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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
RICHARD WAGNER, M.D. : CHARGES

-----X

RICHARD WAGNER, M.D., the Respondent, was authorized to practice medicine in New York State on February 3, 1978 by the issuance of license number 133565 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department.

**FACTUAL ALLEGATIONS**

1. Respondent, in approximately late 1994 or early January 1995, applied for a locum tenens <sup>TELEMS</sup> physician position with Benedictine Hospital, Kingston, New York. Respondent was interviewed by telephone with regard to his application.

- a. In response to the oral question whether his medical license had ever been disciplined, Respondent answered "no" when, in fact, Respondent's Pennsylvania license was suspended on June 13, 1994 and was not reinstated until March 28, 1995 and his New York license was suspended for a period of two years on November 25, 1987, and Respondent knew such facts.
- b. In response to the oral question whether he had ever lost privileges at any hospital, Respondent answered "no", when, in fact, his privileges at Warren General Hospital Pennsylvania were summarily suspended on November 21, 1983 and permanently revoked on April 30, 1985, and Respondent knew of such facts.

2. In approximately January or February 1995, Respondent intentionally misrepresented to hospital staff that a salary advance had been applied toward his medical malpractice insurance when, in fact, Respondent failed to pay the premium and Respondent knew such facts.

FIRST THROUGH THIRD SPECIFICATIONS  
PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with professional misconduct under N.Y. Education Law §6530(2) (McKinney Supp. 1997) by reason of practicing the profession fraudulently in that Petitioner charges:


1. The facts in paragraphs 1 and 1a.
2. The facts in paragraphs 1 and 1b.
3. The facts in paragraph 2.

FOURTH SPECIFICATION  
MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Education Law §6530(20) (McKinney Supp. 1997) by reason of engaging in conduct in the practice of medicine which evidences moral unfitness to practice medicine in that Petitioner charges:

4. The facts contained in paragraphs 1 and 1a and/or 1 and 1b, and/or 2.

DATED: *July 25*, 1997  
Albany, New York

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