



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

November 23, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Hiser, Esq.
Assistant Counsel
New York State Department of Health
Corning Tower Building, Room 2429
Empire State Plaza
Albany, New York 12237

Stephen Zaresky, M.D.
5433 Dry Creek Road
Napa, California 94558-9719

RE: In the Matter of STEPHEN ZARESKY, M.D.

Dear Mr. Hiser and Mr. Zaresky:

Enclosed please find the Determination and Order (No. 93-192) of the Hearing Committee 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
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 (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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.

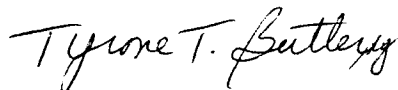
The notice of review served on the Administrative Review Board should be forwarded to:

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

Very truly yours,

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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rg
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
STEPHEN ZARESKY, M.D. : ORDER No.-93-192
-----X

A Notice of Hearing, dated September 19, 1993 and a Statement of Charges, dated September 16, 1993, were served upon the Respondent, Stephen Zaresky, M.D. **OLIVE M. JACOB (Chair), ALBERT L. BARTOLETTI, M.D., and JOHN H. HOBICA, M.D.,** 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. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. A hearing was held on October 20, 1993. The Department of Health appeared by Michael Hiser, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by 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)(a)(ii) and 6530(9)(b). 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. Stephen Zaresky, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on 1973 by the issuance of license number 115550 by the New York State Education Department. Respondent is not currently registered with the New

York State Education Department to practice medicine and has not been so registered since at least 1980. (Pet. Ex. #2).

2. On or about February 12, 1990, in case number CR-89-0593 in the United States District Court for the Northern District of California, Respondent pled guilty to furnishing false and fraudulent material information in applications, reports, records, and other documents required to be made, kept and filed under subchapter I of Chapter 13, Title 21, United States Code. Respondent's actions were in violation of Title 21, United States Code, Section 843(a)(4)(A). (Pet. Ex. #5).

3. Based on his conviction, Respondent was placed on probation for a term of three years. As a condition of probation, Respondent was prohibited from possessing illegal controlled substances. Respondent was also required to participate in an approved program for substance abuse, and an approved mental health program. (Pet. Ex. #5).

4. By Decision dated August 30, 1990, effective October 1, 1990, the Medical Board of California, Division of Medical Quality, Department of Consumer Affairs, State of California (hereinafter "California Board"), revoked Respondent's physician and surgeon certificate, following a proposed decision issued by an Administrative Law Judge on July 9, 1990. (Pet. Ex. #6).

5. The Administrative Law Judge found that Respondent obtained a large quantity of controlled substances, including Hydrocodone, Butalbital, Librium, Valium, and Dalmane (Flurazepam),

as well as anabolic steroids, including Testosterone, Testosterone Enanthate, Anadrol, Anavar, and Nadrolone Deconate, by misrepresentation, fraud, deception and/or subterfuge by purchasing these substances for his and his wife's personal use. Respondent's conduct was found to be a violation of California Business and Profession's Code Sections 2220, 2234, 2238, 2239(a), and California Health and Safety Code Sections 11170 and 11173(a). (Pet. Ex. #6).

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 unanimously concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was convicted, upon a plea of guilty, to various crimes under Federal Law. Consequently, the Hearing Committee voted to sustain the First Specification.

The record also established that Respondent was found guilty of professional misconduct by the California Board, and that his California medical license was revoked. Respondent fraudulently obtained large amounts of controlled substances and anabolic steroids for his and his wife's personal use. Respondent's conduct in this regard, if committed in New York

State, would constitute professional misconduct under the laws of New York State. More specifically, the Hearing Committee concluded that Respondent's conduct would constitute professional misconduct in violation of New York Education Law Sections 6530(2) (practicing the profession fraudulently); 6530(3) (negligence on more than one occasion); 6530(4) (gross negligence); 6530(5) (incompetence on more than once occasion); 6530(6) (gross incompetence); 6530(8) (being an habitual abuser of alcohol or other drugs); 6530(16) (willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of medicine); 6530(20) (moral unfitness), and 6530(21) (willfully making or filing false reports).

Based upon the foregoing, the Hearing Committee voted to sustain the Second Specification of professional misconduct.

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 revoked. 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 established that Respondent was convicted of crimes under Federal law, and disciplined by the California Board,

for serious violations of the laws concerning controlled substances. It is apparent that those violations occurred in the context of a serious and long-standing addiction to controlled substances on the part of Respondent.

Respondent failed to appear at these proceedings to offer any evidence of mitigation. In the absence of such, revocation is the only appropriate sanction. In the event that Respondent successfully undergoes a program of rehabilitation and wishes to regain his New York medical license, he may seek a restoration of his license from the New York State Board of Regents one year following the effective date of this Determination and Order. At that time, he may present evidence which might demonstrate his renewed fitness to practice the profession.

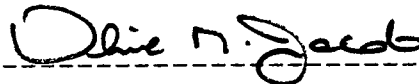
ORDER

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

1. The First and Second Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) are SUSTAINED;

2. Respondent's license to practice medicine in New York State be and is hereby REVOKED.

DATED: Albany, New York
November 20, 1993



OLIVE M. JACOB (Chair)

ALBERT L. BARTOLETTI, M.D.
JOHN H. HOBIKA, M.D.

TO: Michael Hiser, Esq.
Assistant Counsel
New York State Department of Health
Corning Tower Building, Room 2429
Empire State Plaza
Albany, New York 12237

Stephen Zaresky, M.D.
5433 Dry Creek Road
Napa, California 94558-9719

APPENDIX I

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

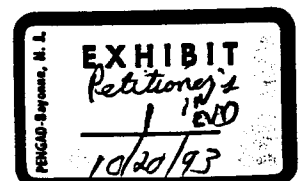
-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: STEPHEN ZARESKY, M.D. : PROCEEDING
: -----X

TO: STEPHEN ZARESKY, M.D.
2096 Shurtleleff Avenue
Nepa, California 94558

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. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20th day of October, 1993 at 1:15 p.m. in the afternoon of that day at Room 2509, Corning Tower Building, 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 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: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 12, 1993 .

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 October 12, 1993 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
September 19, 1993

Peter D. Van Buren

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

Inquiries should be addressed to:

Michael Hiser
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
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

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IN THE MATTER : STATEMENT
OF : OF
STEPHEN A. ZARESKY, M.D. : CHARGES

-----X

STEPHEN A. ZARESKY, M.D., the Respondent, was authorized to practice medicine in New York State on February 20, 1973 by the issuance of license number 115550 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine and has not been so registered since at least 1980.

FACTUAL ALLEGATIONS

A. On or about February 12, 1990, in case number CR-89-0593 in the United States District Court for the Northern District of California, Respondent pled guilty to furnishing false and fraudulent material information in applications, reports, records, and other documents required to be made, kept and filed under subchapter I of Chapter 13, Title 21, United States Code. Respondent's actions were in violation of Title 21, United States Code, §843(a)(4)(A).

B. Based on his conviction, Respondent was placed on probation for a term of three years. As a condition of probation, Respondent was prohibited from possessing illegal controlled substances. Respondent was also required to participate in an approved program for substance abuse, and in an approved mental health program.

C. By Decision dated August 30, 1990, effective October 1, 1990, the Medical Board of California, Division of Medical Quality, Department of Consumer Affairs, State of California (hereafter, "California Board"), adopted the proposed decision of the Administrative Law Judge dated July 9, 1990. The proposed decision by the Administrative Law Judge had been to order that Respondent's physician and surgeon certificate be revoked.

D. The Findings of Fact in the Proposed Decision, as adopted by the California Board, found that Respondent obtained a large quantity of controlled substances, (including Hydrocodone, Butalbital, Librium, Valium (Diazepam) and Dalmane (Flurazepam)), as well as anabolic steroids (including Testosterone, Testosterone Enanthate, Anadrol, Anavar, and Nadrolone Deconoate) by misrepresentation, fraud, deception and/or subterfuge by purchasing these substances for his and his wife's personal use. Respondent's conduct was deemed to be a violation of California Business and Profession's Code §§2220,

2234, 2238, 2239(a), and California Health and Safety Code §§11170 and 11173(a).

E. The conduct of Respondent that resulted in the revocation of his medical license in the State of California would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically, New York Educ. Law §6530(2) (practicing the profession fraudulently); §6530(3) (practicing the profession with negligence on more than one occasion); §6530(4) (practicing the profession with gross negligence on a particular occasion); §6530(5) (practicing the profession with incompetence on more than one occasion); §6530(6) (practicing the profession with gross incompetence); §6530(8) (being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effect); §6530(9)(a)(ii) (being convicted of committing an act constituting a crime under federal law); §6530(9)(e) (having been found by the Commissioner of Health to be in violation of Article 33 of the Public Health Law); §6530(16) (a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine); §6530(20) (conduct in the practice of medicine which evidences moral unfitness to practice medicine); and §6530(21) (willfully making

or filing a false report, or failing to file a report required by law).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

BEING CONVICTED OF COMMITTING AN ACT
CONSTITUTING A CRIME UNDER FEDERAL LAW

Respondent is charged with having been convicted of committing an act constituting a crime under federal law, within the meaning of N.Y. Educ. Law §6530(9)(a)(ii) (McKinney Supp. 1993) in that Petitioner charges:

1. The facts in Paragraphs A and B.

SECOND SPECIFICATION

HAVING BEEN FOUND GUILTY OF IMPROPER
PROFESSIONAL PRACTICE OR PROFESSIONAL
MISCONDUCT BY A DULY AUTHORIZED PROFESSIONAL
DISCIPLINARY AGENCY OF ANOTHER STATE

Respondent is charged with 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, within the meaning of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1993), in that Petitioner charges:

2. The facts in Paragraphs C, D and E.

DATED: Albany, New York
September 16, 1993

Peter D. Van Buren

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