



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 16, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Hermes Fernandez, Esq.
Bond, Schoeneck & King, LLP
111 Washington Avenue
Albany, New York 12210-2211

Douglas Holland Rank, M.D.
6462 Stover Drive
Cincinnati, Ohio 45237

Douglas Holland Rank, M.D.
3133 Custer Drive
Lexington, Kentucky 40517

RE: In the Matter of Douglas Holland Rank, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-272) 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 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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

**IN THE MATTER
OF
DOUGLAS HOLLAND RANK, M.D.**

DETERMINATION

AND

ORDER

BPMC #01-272

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated August 21, 2001, were served upon the Respondent, **DOUGLAS HOLLAND RANK, M.D.** **HRUSIKESH PARIDA, M.D.**, Chairperson, **RAFAEL LOPEZ, M.D.** and **NANCY J. MACINTYRE, R.N., PH.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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 18, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **PAUL ROBERT MAHER, ESQ.** and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person and by **HERMES FERNANDEZ, ESQ.**

Evidence was received 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, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (3), (16), (20), and (44). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Respondent

Diana Loh, B.S.N, M.S.N.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". The abbreviation "FF" refers to finding(s) of fact. These citations refer to 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.

1. **DOUGLAS HOLLAND RANK, M.D.**, the Respondent, was authorized to practice medicine in New York State on November 1, 1985, by the issuance of license number 164631 by the New York State Education Department (Ex. 4).
2. On May 17, 2000, the Commonwealth of Kentucky, State Board of Medical Licensure (hereinafter "Kentucky Board"), by an "Order of Revocation; Probated, Order of Suspension and Probation" (hereinafter "Kentucky Order"), revoked Respondent's license to practice medicine, stayed the revocation, suspended his license for two (2) years, stayed the last eighteen (18) months of the suspension and placed his license on five (5) years probation, based upon findings that Respondent, a psychiatrist, had sexual contact with a patient while she was under his care and that he failed to maintain acceptable psychiatrist/patient boundaries (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Kentucky Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(3)(negligence on more than one occasion);
- New York Education Law §6530(16)(gross or willful failure to comply with federal, state or local laws, rules or regulations governing the practice of medicine);
- New York Education Law §6530(20)(moral unfitness);
- New York Education Law §6530(44)(physical contact of a sexual nature between a psychiatrist and patient);

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by 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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had 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

disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that on May 17, 2000, the Kentucky Board, by issuance of the Kentucky Order, revoked Respondent's license to practice medicine, stayed the revocation, suspended his license for two years, stayed the last eighteen months of the suspension and placed his license on five years probation, based upon findings that Respondent had sexual contact with a patient while she was under his care and that he failed to maintain acceptable psychiatrist/patient boundaries. Specifically, Respondent had sexual intercourse with a patient on at least four occasions, and engaged in inappropriate out-of-office contacts with her, at a time when he was treating her (Hearing Officer's findings of fact, contained in exhibit 5).

Respondent's actions constituted misconduct in New York State under the statutory provisions cited above. Specifically, Respondent's conduct would have constituted negligence on more than one occasion had it occurred in New York, involved a willful failure to comply with state laws governing the practice of medicine (as cited in Ex. 5), and evinced moral unfitness.

The Department also charged that Respondent's conduct would have constituted misconduct in New York under New York Education Law §6530(44), which defines misconduct, in pertinent part, as follows:

In the practice of psychiatry, ... any physical contact of a sexual nature between the licensee and patient...

The question of whether Respondent's conduct violated this definition of misconduct is more complex, given the history of Respondent's involvement with this patient. Although resolution of this issue is not crucial to the ultimate result in this proceeding, since the charge was made, it must be addressed.

The Kentucky Hearing Officer's fact-findings indicate that Respondent treated the patient on at least a weekly basis for severe migraine headaches resulting from an automobile accident, and related depression, from November, 1993 through early September, 1994. At that time, he discharged the patient because she made physical advances toward him and he believed that she was suffering from "'transference', ... a primarily unconscious tendency ... to assign to her psychiatrist those feelings originally connected with significant figures during the course of early development" (Ex. 5, FF's 8-10).

However, in March, 1995, Respondent again began to see the patient, at the request of her surgeon, for treatment of her severe migraine headaches. Thereafter, their relationship developed into a social, business and sexual relationship, all while Respondent was treating the patient (Ex. 5, FF's 11-22). Although Respondent was billing the patient (or her insurance carrier) only for medical care, and not psychiatric care, during this period, the Hearing Committee concludes that the care being provided to the patient was provided "in the practice of psychiatry", since the patient had previously been his psychiatric patient, and especially since there is no evidence that the patient was not still suffering from some depression and/or transference. This was not a case where a mentally stable patient was seen by a psychiatrist solely for medical care, where the argument that there was no "practice of psychiatry" might be stronger. The patient was a former psychiatric patient and was, during this period, experiencing marital difficulties.

This conclusion is consistent with the conclusion reached by the Kentucky Board, as expressed in the Hearing Officer's FF # 44, as incorporated into the final order:

Finally, despite some evidence presented to the contrary, it was found as fact that Dr. Rank's professional transgressions and boundary violations with Patient A occurred during the course of the psychiatrist-patient relationship. The undersigned adopts the conclusions reached in [thereafter-cited] decisions which hold that a violation is committed, for which a sanction should be imposed, even if the professional relationship is terminated prior to the initiation of the sexual relationship with the patient.

Since Respondent was found guilty of medical misconduct and disciplined in Kentucky after charges were brought against him, the acts for which he was disciplined in Kentucky constitute misconduct under New York Education Law §6530(9)(b) and (d).

Having so found, the Hearing Committee next addresses itself to the appropriate penalty to be imposed. The Hearing Committee concludes that revocation of Respondent's New York License is the appropriate penalty under the circumstances. The Hearing Committee was especially troubled by the evidence as to how Respondent's sexual relationship with the patient came about, and by his admissions at the hearing that, despite his knowledge that it was wrong to have sexual contact with a patient, he did so on multiple occasions, and that, despite his knowledge that there were rules against this behavior, he willfully violated these rules.

The Hearing Committee does not feel constrained to be as lenient toward Respondent as was the Kentucky Board, and, in fact, concludes that no tolerance should be accorded to physicians who engage in sexual activity with patients. The Hearing Committee concludes, therefore, that Respondent's New York medical license should be revoked. The Hearing Committee was not swayed by the evidence presented by Respondent as to the steps he has taken to minimize the possibility that such conduct might be repeated.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's New York Medical license should be **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

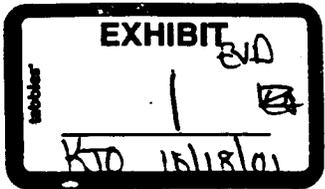
DATED: Middletown, New York
9 NOV., 2001

Hrusikesh Parida

HRUSIKESH PARIDA, M.D.
Chairperson

RAFAEL LOPEZ, M.D.
NANCY J. MACINTYRE, R.N., PH.D.

APPENDIX 1



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

IN THE MATTER
OF
DOUGLAS HOLLAND RANK, M.D.
CO-01-06-2785-A

NOTICE OF
REFERRAL
PROCEEDING

TO: DOUGLAS HOLLAND RANK, M.D.
6462 Stover Drive
Cincinnati, Ohio 45237

DOUGLAS HOLLAND RANK, M.D.
3133 Custer Drive
Lexington, KY 40517

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 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 28th day of September 2001, 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 attached Statement of Charges. 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 that 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, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 18, 2001.

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 of 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 September 18, 2001, 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

August 21, 2001



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
DOUGLAS HOLLAND RANK, M.D.
CO-01-06-2785-A

STATEMENT
OF
CHARGES

DOUGLAS HOLLAND RANK, M.D., the Respondent, was authorized to practice medicine in New York state on November 1, 1985, by the issuance of license number 164631 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 17, 2000, the Commonwealth of Kentucky, State Board of Medical Licensure (hereinafter "Kentucky Board"), by an Order of Revocation; Probated, Order of Suspension and Probation (hereinafter "Kentucky Order"), revoked Respondent's license to practice medicine, stayed the revocation, suspended his license for two (2) years, stayed the last eighteen (18) months of the suspension and placed his license on five (5) years probation, based on Respondent, a psychiatrist, having sexual contact with a patient while she was under his care and his failure to maintain acceptable psychiatrist/patient boundaries.

B. The conduct resulting in the Kentucky Board's disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine);
3. New York Education Law §6530(20) (moral unfitness); and/or

4. New York Education Law §6530(44) (in the practice of psychiatry, physical contact of a sexual nature between licensee and patient).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by 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, in that Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had 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 disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *August 21*, 2001
Albany, New York


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