



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

March 10, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Gregory Walter, M.D.
539 North Westover Boulevard
Apartment 521
Albany, ~~New York~~ 31707-1965
GEORGIA

RE: In the Matter of Gregory Walter, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-60) 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 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

COPY

IN THE MATTER
OF
GREGORY WALTER, M.D.

DETERMINATION
AND
ORDER
BPMC #03-60

A hearing was held on February 19, 2003, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated December 13, 2002, were served upon the Respondent, **Gregory Walter, M.D.** **Joel H. Paull, D.D.S., M.D., J.D.**, Chairperson, **Teresa S. Briggs, M.D., Ph.D.**, and **James P. Milstein, J.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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Paul Robert Maher, Esq.**, and **Robert Bogan, Esq.**, of Counsel. The Respondent appeared at the hearing and represented himself.

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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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), 6530(9)(b) and 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Gregory Walter, M.D.

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." 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.

1. Gregory Walter, M.D., the Respondent, was authorized to practice medicine in New York State on November 12, 1985, by the issuance of license number 164739 by the New York State Education Department (Petitioner's Ex. 5).
2. On September 23, 1998, in the State Court of Gwinnett County, Georgia, the Respondent was found guilty of Driving Under the Influence of Alcohol and was

sentenced to twelve months probation, 40 hours of community service and an \$800.00 fine (Petitioner's Ex. 6).

3. On August 14, 2002, the South Carolina Board of Medical Examiners ("South Carolina Board"), by a Final Order ("South Carolina Order"), publicly reprimanded the Respondent and fined him \$1,000.00, for failing to deal honestly with patients and colleagues, for failing to respect the law, and for engaging in dishonorable, unethical or unprofessional conduct that is likely to deceive, defraud or harm the public. Specifically, the South Carolina Board found that the Respondent prescribed large quantities of controlled substances for his wife without indication or medical justification, that he wrote the prescriptions in his wife's maiden name to conceal the fact that he was writing these prescriptions for his wife, and that he did this despite the knowledge that his wife had substance abuse problems. (Petitioner's Ex. 7).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent described in the South Carolina Order would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(2) – "Practicing the profession fraudulently or beyond its authorized scope;" and
- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of eighteen years..."

The Statement of Charges also alleged that the conduct described in the South Carolina Order, had it occurred in New York State, would have constituted negligence on

more than one occasion (Education Law Section 6530[3]), gross negligence (Education Law Section 6530[4]), incompetence on more than one occasion (Education Law Section 6530[5]), gross incompetence (Education Law Section 6530[6]) and moral unfitness (New York Education Law Section 6530[20]). The Hearing Committee concludes that the hearing record does not support these allegations, despite the fact that the Petitioner's attorney was able on cross-examination to extract admissions of gross negligence and moral unfitness from the Respondent. The element of carelessness that is an element of negligence is not present in this case. Likewise, the absence of skill or knowledge that is the basis of incompetence is not present. The moral unfitness charge is rejected because the Respondent's fraudulent acts were caused by poor judgment engendered by his being in an extremely difficult situation, not by moral unfitness. This situation is described in the Hearing Committee Determination section, below.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(iii) by being convicted of an act constituting a crime under the laws of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law..."

VOTE: Not Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 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)

THIRD SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken 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 of New York state...

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted in Georgia of Driving Under the Influence of Alcohol, which is a misdemeanor in Georgia. The First Specification in the Statement of Charges in the present New York State proceeding alleges that such conduct would constitute a crime, had it been committed in New York State. However, it is not clear that that allegation is accurate. The papers from the Georgia Court (Petitioner's Ex. 6) do not disclose whether the Respondent's conduct would constitute, under New York State law, Driving While Intoxicated, a crime (Vehicle and Traffic Law Section 1192[2] and [3], 1193[1][b] and [c]), or whether his conduct would constitute Driving While Ability Impaired, a traffic infraction (Vehicle and Traffic Law Section 1192[1], 1193[1][a]). The Respondent testified credibly that after his arrest, his blood alcohol level measured .083 of one per cent. In New York State, this blood alcohol level is evidence of Driving While Ability Impaired, not Driving While Intoxicated. The hearing record does not contain evidence sufficient to sustain the First Specification.

The Second and Third Specifications relate to the findings in the South Carolina Order. The Respondent's wife, who suffered from chronic back pain, had been taking controlled substance pain medications prescribed to her by a physician other than the Respondent. When the services of that physician became unavailable to the Respondent's wife, the Respondent recommended a clinic where his wife could receive

treatment for her back pain. His wife refused to go to the clinic and insisted that he provide her with pain medication prescriptions. They argued about this and the Respondent eventually relented. He wrote prescriptions for controlled substances in his wife's maiden name, knowing that she had a problem with these controlled substances. He did not create and maintain sufficient medical records of the treatment that he provided to his wife.

The Respondent should not have written these prescriptions, regardless of how much pain his wife was in and regardless of how much pressure she put on him. However, the difficulty of the situation the Respondent was in is a mitigating factor. The Respondent has suffered humiliation among his peers and a considerable loss of income and professional standing as a result of the South Carolina Order. The Hearing Committee observed the Respondent during his testimony and is convinced that he is truly remorseful about his transgression and that the probability of similar wrongdoing is remote. A censure and reprimand should be a sufficient penalty under these circumstances.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded.
2. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

DATED: Eggertsville, New York
March 6, 2003



Joel H. Paul, D.D.S., M.D., J.D.
Chairperson

Teresa S. Briggs, M.D., Ph.D.
James P. Milstein, J.D.

APPENDIX I

ORIGINAL

EXHIBIT

1
JH EV 2/19/03

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

IN THE MATTER
OF
GREGORY WALTER, M.D.
CO-02-10-5245-A

NOTICE OF
REFERRAL
PROCEEDING

TO: GREGORY WALTER, M.D.
539 North Westover Blvd.
Apt. 521
Albany, GA 31707-1965

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 22nd day of January 2003, 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 January 13, 2003.

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 January 13, 2003, 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
December 13, 2002



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
GREGORY WALTER, M.D.
CO-02-10-5245-A

STATEMENT
OF
CHARGES

GREGORY WALTER, M.D., the Respondent, was authorized to practice medicine in New York state on November 12, 1985, by the issuance of license number 164739 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 23, 1998, in the State Court of Gwinnett County, State of Georgia, Respondent was found guilty of Driving Under the Influence of Alcohol and sentenced to twelve (12) months confinement to be served as probation, forty (40) hours of community service, and an \$800.00 fine.

B. On or about August 14, 2002, the South Carolina State Board of Medical Examiners, (hereinafter "South Carolina Board"), by a Final Order, (hereinafter "South Carolina Order"), publicly reprimanded Respondent and fined him \$1,000.00, based on failing to deal honestly with patients and colleagues, failing to respect the law, and engaging in dishonorable, unethical, or unprofessional conduct that is likely to deceive, defraud, or harm the public, as evidenced by his prescribing large quantities of controlled substances for his wife without indication or medical justification, and his use of his wife's maiden name to conceal the fact that he was writing numerous prescriptions for her, all despite the knowledge of his wife's substance abuse problems.

C. The conduct resulting in the South Carolina Board 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(4) (gross negligence);
4. New York Education Law §6530(5) (incompetence on more than one occasion);
5. New York Education Law §6530(6) (gross incompetence);
6. New York Education Law §6530(20) (moral unfitness); and/or
7. New York Education Law §6530(32) (failure to maintain a record for each patient

which accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraphs A.

SECOND 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 the Petitioner charges:


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

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken 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:

3. The facts in Paragraphs B and/or C.

DATED: *Dec. 13*, 2002
Albany, New York


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