



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

February 6, 2003

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kenneth C. Carlson, M.D.
1726 Carhart Avenue
Peekskill, New York 10566

Robert Bogan, Esq.
NYS Department of Health
Office of Professional
Medical Conduct
433 River Street, Suite 303
Troy, New York 12180

RE: In the Matter of Kenneth C. Carlson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-33) 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

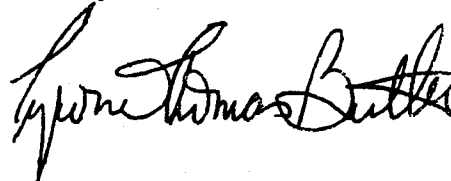
forwarded to:

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:
Enclosure

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

COPY

IN THE MATTER
OF
KENNETH C. CARLSON, M.D.

DETERMINATION

AND

ORDER

BPMC NO. 03-33

A Notice of Referral Proceeding and Statement of Charges, both dated December 13, 2002, were served upon the Respondent, **KENNETH C. CARLSON, M.D.**. **ROGER OSKVIG, M.D.**, Chairperson, **LYON M. GREENBERG, M.D.** and **SISTER MARY THERESA MURPHY**, 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 January 22, 2003, 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 **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person.

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 Section 6530(9)(a)(i) (conviction of a crime under New York State law). 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:

Kenneth C. Carlson, M.D.

FINDINGS OF FACT

The following Findings of Fact ("F.F.") 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. **KENNETH C. CARLSON, M.D.**, the Respondent, was authorized to practice medicine in New York State on September 11, 1992, by the issuance of license number 190393 by the New York State Education Department (Ex. 4).
2. On September 18, 1998, Respondent, by a plea of guilty, was convicted of the crime of Reckless Endangerment, Second Degree (New York Penal Law §120.20, a class A misdemeanor) by the City Court of White Plains, New York. He was sentenced to a Conditional Discharge, a fine of \$250.00 and a mandatory surcharge of \$110.00 (Ex. 5).
3. On September 18, 1998, Respondent was also convicted in the City Court of White Plains, by a plea of guilty, of Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree (Vehicle and Traffic Law §511.1, a misdemeanor). He was sentenced to payment of a fine of \$250.00 (Ex. 5).
4. On or about April 26, 1999, Respondent was convicted, in the Westchester County Court, of Criminal Contempt, 1st Degree, a Class E felony (Penal Law §215.51(b)), pursuant to a guilty plea. Respondent was sentenced to 5 years' probation, payment of a mandatory surcharge of \$150, and payment of a victim's fee of \$5.00 (Ex. 6).
5. On May 8, 2001, Respondent was convicted, by a guilty plea, of the Class A Misdemeanor of Forgery 3rd Degree (Penal Law 170.05) by the Village of Buchanan Justice Court. Respondent was sentenced to 3 years' probation and payment of a mandatory \$125.00 surcharge. In addition a permanent order of protection was issued for the victim, Respondent's ex-wife (Ex. 7).
6. On or about February 15, 2002, Respondent was convicted, in the Westchester County Court, of Criminal Contempt, 1st Degree, a Class E felony (Penal Law §215.51), pursuant to a guilty plea. Respondent was sentenced to 85 days' incarceration and an over five-month extension of his probation (Ex. 8).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent was convicted of a number of crimes under New York State Law, and each conviction constituted professional misconduct pursuant to New York Education Law §6530(9)(a)(i).

VOTE OF THE HEARING COMMITTEE

FIRST THROUGH FIFTH SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of crimes under New York State Law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent was convicted of five crimes under New York State law during the period of September, 1998 through February, 2002.

The first conviction, for Reckless Endangerment, Second Degree, stemmed from an incident when Respondent, attempting to avoid issuance of a parking summons, endangered a parking summons agent with his car, and the second conviction, for Aggravated Unlicensed Operation of a Vehicle 3rd Degree, stemmed from a driving record check during the parking summons incident.

The third conviction, for Criminal Contempt First Degree, stemmed from Respondent's telephone harassment of his ex-wife, in violation of an Order of Protection.

The fourth conviction, for Forgery in the Third Degree, resulted from Respondent's use of a credit card he obtained by forging his ex-wife's name to the application. The fifth

conviction was based upon violations of Respondent's previous probation (see F.F. #4, above) due to his forgery conviction (F.F. #5) and failures to report for probation supervision.

These convictions constitute incidents of professional misconduct under New York Education Law §6530(9)(a)(i). Accordingly, the only issue remaining to be addressed is the penalty to be imposed for this misconduct.

The Hearing Committee found Respondent's repeated disregard for the law to be troubling and totally inconsistent with the conduct expected of physicians, and is of the unanimous opinion that a significant penalty is called for. However, the Hearing Committee does not feel that revocation of Respondent's license is the appropriate penalty. Part of the basis for this conclusion is that Respondent candidly admits that he made mistakes that led to his criminal conduct, that he has achieved at least some degree of recognition of his problems, including problems related to his criminal behavior and that he is, by his testimony, taking steps to deal with those problems.

Respondent testified that he is engaged in therapy in an attempt to deal with his psychological problems, including impulsivity and tendency to fight things based upon his feeling that he is in the right, and that he is regularly attending AA meetings in an attempt to deal with the addictive tendencies that led to the temporary surrender of his medical license in early 1998 and the subsequent consented-to indefinite suspension of his license for practicing after his license was surrendered (respondent testified that he was prohibited pursuant to the Consent Agreement from applying for reinstatement for a minimum of one year).

The Hearing Committee is reluctant to preclude Respondent from future licensure if there is some hope that he might again become a productive practitioner in some medical

setting. However, by the same token, the Hearing Committee does not have enough information at its disposal to make any sort of educated assessment of Respondent's current suitability to practice. It feels, accordingly, that the appropriate sanction is a fixed two-year suspension of Respondent's license, the practical effect of which will be to postpone any attempt by him to effectuate restoration of his license pursuant to the previously agreed-to suspension until the two-year suspension called for in this decision is completed. At that time, Respondent may seek reinstatement, and the Board may make an informed decision as to the Respondent's future practice of medicine, based upon all the provisions of his consent agreement and documentation produced for that purpose.

Hopefully, this suspension will strongly impress upon Respondent the fact that his future practice of medicine depends, in part, upon his ability to avoid engaging in criminal behavior or other acts of misconduct.


ORDER

IT IS HEREBY ORDERED THAT:

The Medical License of **KENNETH C. CARLSON, M.D.** is hereby suspended for a period of **TWO (2) YEARS.**

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: Pittsford, New York
January 21, 2003



ROGER OSKVIG, M.D.
Chairperson

LYON M. GREENBERG, M.D.
SISTER MARY THERESA MURPHY

APPENDIX 1

STATE OF NEW YORK
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

**KENNETH C. CARLSON, M.D.
PM-02-10-4945-A**

NOTICE OF

REFERRAL

PROCEEDING

**TO: KENNETH C. CARLSON, M.D.
1726 Carhart Avenue
Peekskill, NY 10566**

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

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

KENNETH C. CARLSON, M.D.
PM-02-10-4945-A

STATEMENT

OF

CHARGES

KENNETH C. CARLSON, M.D., the Respondent, was authorized to practice medicine in New York state on September 11, 1992, by the issuance of license number 190393 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 18, 1998, in the City Court of White Plains, White Plains, New York, Respondent was convicted, based on a plea of guilty, of Reckless endangerment in the second degree, in violation of New York Penal Law, Section 120.20, a class A misdemeanor, and was sentenced to a conditional discharge, a \$250.00 fine, and a \$150.00 mandatory surcharge.

B. On or about September 18, 1998, in the City Court of White Plains, White Plains, New York, Respondent was convicted, based on a plea of guilty, of Aggravated unlicensed operation of a motor vehicle in the third degree, in violation of New York Vehicle and Traffic Law, Section 511.1, a misdemeanor, and was sentenced to a \$250.00 fine.

C. On or about April 26, 1999, in the County Court of Westchester, Westchester County, New York, Respondent was convicted, based on a plea of guilty, of Criminal contempt in the first degree, in violation of New York State Penal Law, Section 215.51(b), a class E felony, and was sentenced to five (5) years probation, a \$155.00 penalty assessment, and a \$155.00 surcharge and victims fee.

D. On or about May 8, 2001, in the Village of Buchanan Justice Court, Buchanan, New York, Respondent was convicted, based on a plea of guilty, of Forgery in the third degree,

in violation of New York Penal Law Section 170.05, a class A misdemeanor, and was sentenced to three (3) years probation, a permanent order of protection, and a mandatory \$125.00 surcharge.


E. On or about February 12, 2002, in the County Court of Westchester, Westchester, New York, Respondent was convicted, based on a plea of guilty, of Criminal contempt in the first degree, in violation of New York State Penal Law, Section 215.51, a class E felony, and was sentenced to eighty five (85) days in County Jail.

SPECIFICATIONS
FIRST THROUGH FIFTH SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(l) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A;
2. The facts in Paragraph B;
3. The facts in Paragraph C;
4. The facts in Paragraph D; and/or
5. The facts in Paragraph E.

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


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