



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

PUBLIC

June 2, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – 4th Floor
Troy, New York 12180

Dwight M. Pagano, M.D.
306 Wyandote Avenue West
Big Stone Gap, VA 24219

Dwight M. Pagano, M.D.
110 Bell Avenue
Apartment 3
Appalachia, VA 24216

Dwight M. Pagano, M.D.
Red Roof Inn
310 East Potomac Street
Williamsport, MD 21795

Dwight M. Pagano, M.D.
P.O. Box 858
Falling Waters, WV 25419-0858

RE: In the Matter of Dwight M. Pagano, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-119) 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.

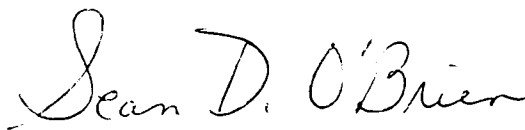
The notice of review served on the Administrative Review Board should be forwarded to:

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 that reads "Sean D. O'Brien". The signature is written in a cursive, flowing style.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah
Enclosure

**IN THE MATTER
OF
DWIGHT M. PAGANO, M.D.**

DETERMINATION

AND

ORDER

BPMC #04-119

COPY

A Commissioner's Summary Order, dated February 20, 2003, and a Notice of Referral Proceeding and Statement of Charges, both dated February 20, 2004, were served upon the Respondent, **DWIGHT M. PAGANO, M.D.** **JERRY WAISMAN, M.D., M.D.**, Chairperson, **ARSENIO G. AGOPOVICH, M.D.** and **MR. MICHAEL WALKER**, 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 May 20, 2004, 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 pro se.

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 Sections 230(12)(b) and 230(10)(p).

The first cited statute provides, among other things, that when the duly authorized professional disciplinary agency of another state has made a finding substantially equivalent to a finding that the practice of medicine by a licensee in that jurisdiction constitutes an imminent danger to the health of its people, the commissioner, after recommendation by a committee of professional misconduct, may order the licensee to discontinue or refrain from the practice of medicine in whole or in part or to take other actions immediately, pending a hearing, which must commence within 30 days of the conclusion of the disciplinary proceedings in the other state.

The latter 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 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 Commissioner issued a summary order prohibiting Respondent from practicing medicine in New York, based upon the issuance by the Virginia Board of Medicine ("the Virginia Board") of an order containing a finding substantially equivalent to a finding that the practice of medicine by Respondent constituted an imminent danger to the health, safety and welfare of that state's people. In addition, Respondent is charged pursuant to Public Health Law §230(10)(p) with professional misconduct pursuant

to Education Law Sections 6530(9)(b) and (d), based upon findings of the Virginia Board regarding conduct that would, if committed in New York, constitute violations of subdivisions (7) (practicing the profession while impaired by alcohol, drugs or mental disability), (8) (being a habitual abuser of alcohol or being dependent on or a habitual abuser of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the ability to practice), and (15) (failure to comply with an order of the Board). Copies of the Commissioner's Order, 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: Respondent

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. **DWIGHT M. PAGANO, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 25, 1980, by the issuance of license number 141105 by the New York State Education Department (Ex. 7).

2. On February 7, 2003, the Virginia Board of Medicine ("the Virginia Board") issued an order summarily suspending Respondent's license based upon evidence that established, to the Board's satisfaction, that Respondent's continued practice of medicine constituted a "substantial danger to the public health and safety". The order included findings regarding specific incidences of Respondent's increasingly unstable, threatening, harassing and intimidating behavior, his mental instability and inability to exhibit good judgment in the practice of medicine, and instances of self-prescription of various controlled substances for his own use (Ex.'s 4 and 8).
3. On February 10, 2004, the Virginia Board issued an Order ("the Revocation Order"), after a hearing at which Respondent did not appear in person or by counsel, revoking his license in that state. The order specified that an order dated April 15, 2003 (amending the February 7, 2003 order) had required him enroll in the Virginia Health Practitioner's intervention Program ("HPIP") and to undergo a comprehensive psychiatric assessment, and that the assessment had resulted in a diagnosis of "untreated bipolar disorder, alcohol dependence and personality disorder" (the evaluators had concluded that "Dr. Pagano is currently considered impaired, untreated, and prone to exercise poor judgment and [has] poor insight", that he "...is not currently appropriate to practice medicine with requisite competency, safety and skill", and that he required admission to a long-term structured program"). The revocation Order also specified that Respondent was dismissed from HPIP for non-compliance (failure to enter into the recommended treatment), and that he had failed to return to the Board, in a timely fashion, authorizations to allow unfettered communications between the Board, HPIP, and Respondent's former and current treating practitioners. The Board concluded that Respondent was guilty of misconduct in that he was unable to practice with

reasonable skill or safety due to illness or substance abuse, and that he was physically or mentally incapacitated or incompetent to practice (Ex. 8).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Virginia Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(b) and (d), in that the conduct would have constituted misconduct in New York, had it been committed here, under:

- New York Education Law §6530(7) (practicing the profession while impaired by alcohol, drugs or mental disability);
- New York Education Law §6530(8) (being a habitual abuser of alcohol or being dependent on or a habitual abuser of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the ability to practice); and
- New York Education Law §6530(15) (failure to comply with an order of the Board).

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 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 record in this case establishes that Respondent's Virginia license was revoked by the Virginia Board based upon his impairment for the practice medicine, as specified above, and after he had failed to obtain treatment for his condition, as required by that board.

Much of Respondent's testimony at the hearing was aimed at convincing the Hearing Committee that he was treated unfairly in Maryland, that the evaluation that led to the revocation order was incorrect, and that much of his behavior that led to the findings in the first Virginia order had been misunderstood. However, the statute governing this proceeding precludes the Hearing Committee from considering these arguments. Pursuant to Public Health Law §230(10)(p), the Virginia findings are binding on this tribunal, and only the issue of penalty may be decided.

One of the only pieces of testimony by Respondent that has any current bearing on the issue to be decided in this case was his testimony that other physicians had determined

that he was safe to practice medicine. However, Respondent presented no other evidence in support of this conclusion, such as reports from these practitioners.

Respondent also expressed a willingness to undergo treatment in the future, if the current suspension of his license in New York is continued. However, Respondent has had well over a year since the summary suspensions were issued in Virginia and New York, and he has made no apparent effort to obtain treatment since that time, or to obtain an evaluation verifying his ability to practice medicine, as requested by the Virginia Board. These failures on Respondent's part do nothing but support the Department's position that Respondent has an untreated psychiatric condition and that his continued authorization to practice medicine in this state presents a danger to the health and safety of New York residents. The Hearing Committee cannot rely solely upon Respondent's unsupported testimony to reach a contrary conclusion.

Respondent has amply demonstrated that he is unwilling or unable to take steps to deal with his psychiatric condition, and any remedy that the Hearing Committee could fashion in this decision that relies upon Respondent to take any such steps would, as evidenced by Respondent's past behavior, be unavailing. Accordingly, the Hearing Committee feels that it has no choice, under the circumstances, but to revoke Respondent's New York license. It is noted that Respondent may apply for a license again in New York after the passage of three years, and if he intends to attempt to recover his license, he will need to demonstrate at that time that he has obtained and is continuing treatment for his condition, and that he is safe to practice medicine.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **DWIGHT M. PAGANO, M.D.** is hereby **REVOKED**.

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

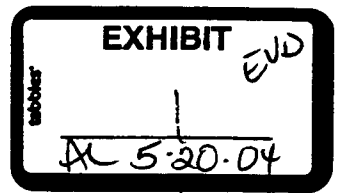
DATED: New York, New York
may 30, 2004

Jerry Waisman, M.D.
JERRY WAISMAN, M.D.
Chairperson

ARSENIO G. AGOPOVICH, M.D.
MR. MICHAEL WALKER

APPENDIX 1

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



IN THE MATTER

OF

**DWIGHT M. PAGANO, M.D.
CO-03-02-0627-A**

**COMMISSIONER'S
SUMMARY
ORDER**

TO: DWIGHT M. PAGANO, M.D.
306 Wyandote Avenue West
Big Stone Gap, VA 24219

DWIGHT M. PAGANO, M.D.
110 Bell Avenue
Apartment 3
Appalacia, VA 24216

DWIGHT M. PAGANO, M.D.
Red Roof Inn
310 Potomac Street
Williamsport, MD 21795

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the Commonwealth of Virginia, Department of Health Professions, Virginia Board of Medicine, (hereinafter "Virginia Board") has made a finding substantially equivalent to a finding that the practice of medicine by DWIGHT M. PAGANO, M.D., Respondent, licensed to practice medicine in New York state on January 25, 1980, by license number 141105, in that jurisdiction constitutes an imminent danger to the health, safety, and welfare of its people, as is more fully set forth in documents of the Virginia Board, attached hereto, as Appendix "A," and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, DWIGHT M. PAGANO, M.D., Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine.

Any practice of medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine in violation of this Commissioner's Summary Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530 and may constitute unauthorized medical practice, a felony defined by N.Y. Educ. Law §6512.


This Order shall remain in effect until the final conclusion of a hearing that shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in the State of Virginia. The hearing will be held pursuant to the provisions of NY. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct, on a date and at a location to be set forth in a written Notice of Summary Hearing, together with a Statement of Charges, to be provided to the Respondent after the final conclusion of the Virginia proceeding. Said written Notice may be provided in person, by mail or by other means. If Respondent wishes to be provided said written notice at an address other than those set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth on this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

Respondent shall notify the Director of the Office of
Professional Medical Conduct, New York State
Department of Health, 433 River Street, Suite 303, Troy,
NY 12180-2299 via Certified Mail, Return Receipt
Requested, of the final conclusion of the Virginia
proceeding immediately upon such conclusion.

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
MAY BE FINED OR SUBJECT TO OTHER SANCTIONS
SET FORTH IN NEW YORK PUBLIC HEALTH LAW
SECTION 230-A. YOU ARE URGED TO OBTAIN AN
ATTORNEY FOR THIS MATTER.

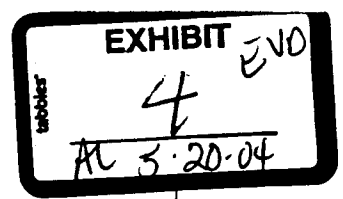
DATE: Albany, New York

Feb. 20, 2003


ANTONIA C. NOVELLO, M.D., M.P.H, Dr. P. H.
Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
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
DWIGHT M. PAGANO, M.D.
CO-03-02-0627-A

NOTICE OF
REFERRAL
PROCEEDING

TO: DWIGHT M. PAGANO, M.D.
306 Wyandote Avenue West
Big Stone Gap, VA 24219

DWIGHT M. PAGANO, M.D.
110 Bell Avenue
Apartment 3
Appalachia, VA 24216

DWIGHT M. PAGANO, M.D.
Red Roof Inn
310 East Potomac Street
Williamsport, MD 21795

DWIGHT M. PAGANO, M.D.
P.O. Box 858
Falling Waters, WV 25419-0858

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 18th day of March 2004, 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. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before March 8, 2004.

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 March 8, 2004, 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

February 20, 2004



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
DWIGHT M. PAGANO, M.D.
CO-03-02-0627-A

STATEMENT
OF
CHARGES

DWIGHT M. PAGANO, M.D., the Respondent, was authorized to practice medicine in New York state on January 25, 1980, by the issuance of license number 141105 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 10, 2004, the Commonwealth of Virginia, Board of Medicine, (hereinafter "Virginia Board"), by an Order (hereinafter "Virginia Order"), revoked Respondent's license to practice medicine, based on mental or physical incapacity or incompetence to practice his profession with safety to his patients and the public, being unable to practice with reasonable skill or safety because of illness or substance abuse, and violations of an Order of the Virginia Board.

B. The conduct resulting in the Virginia 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(7) (practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability);
2. New York Education Law §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 effects, or having a psychiatric condition which impairs the licensee's ability to practice); and/or
3. New York Education Law §6530(15) (failure to comply with an order of the Board).

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 or 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 his license to practice medicine revoked or having other disciplinary action taken, by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation or other disciplinary action, 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.

DATED: *February 20*, 2004
Albany, New York


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