



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

May 6, 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

Ronald Edwin Fincher, M.D.
2787 Margaret Mitchell Drive, NW
Atlanta, Georgia 30327

RE: In the Matter of Ronald Edwin Fincher, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-109) 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.

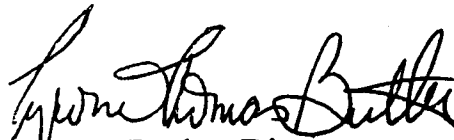
The notice of review served on the Administrative Review Board should be forwarded to:

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,



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
RONALD EDWIN FINCHER, M.D.

DETERMINATION
AND
ORDER
BPMC #03-109

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated March 31, 2003, were served upon the Respondent, **RONALD EDWIN FINCHER, M.D.** **JOHN B. WALDMAN, M.D.**, Chairperson, **RICHARD N. ASHLEY, 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 April 24, 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.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent did not appear at the hearing.

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 (2), (21), and (29¹). 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: None

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

¹ The Department withdrew at the hearing a charge that Respondent's conduct would have constituted misconduct under Education Law §6530 subdivision (15).

particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. **RONALD EDWIN FINCHER, M.D.**, the Respondent, was authorized to practice medicine in New York State on June 9, 1993, by the issuance of license number 192340 by the New York State Education Department (Ex. 4).
2. On November 16, 2002, the Arkansas State Medical Board ("the Arkansas Board"), entered an Order wherein it was concluded that Respondent had violated a September 30, 1999 Consent Order with the Arkansas Board that, in exchange for the Board not bringing disciplinary charges against him, required Respondent to appear before the Board before practicing in Arkansas, and provide notification of the location and type of practice he would engage in. The Board concluded that Respondent had violated the Consent Order by practicing at four different hospitals in Arkansas during the years 2000 and 2001 without notifying the Board of his intention to do so (Ex. 5).
3. The Arkansas Consent Order was based upon the charge that Respondent had been reprimanded by the Virginia Board for consuming alcoholic beverages while on call at a hospital, and that the Virginia action resulted in New York State disciplinary action (a Censure and Reprimand with one year probation) and the indefinite suspension of his license by the North Carolina Board (Ex. 5).
4. On April 14, 2003, Respondent, who was duly notified of the instant hearing, notified the Department's attorney that he would not be attending the hearing (Ex. 2(a)).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Arkansas 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 upon which that Board's action was based would have constituted misconduct had it been committed in New York State pursuant to:

- New York Education Law §6530(12) (practicing the profession while the license is suspended or inactive);
- New York Education Law §6530(21) (failing to file a report required by the department of health or education);
- New York Education Law §6530(29) (violating any term of probation or condition or limitation imposed on the licensee).

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 indicates that Respondent was disciplined by the Arkansas board for his failure to comply with a Consent Order requiring him to notify the Board and appear before it before practicing in that state. The unauthorized practice occurred over a period of two years.

The Hearing Committee considers this to be an extremely serious matter, especially in light of the concern of the Arkansas Board with respect to Respondent's prior use of alcohol while on call at a hospital in Virginia.

It is clear that the action of the Arkansas Board mandates a finding of misconduct in this state, as set forth above. Therefore, the only issue to be addressed in this decision is the appropriate penalty to be imposed in this case. Unfortunately, Respondent saw fit not to attend this hearing, and therefore has presented no evidence in mitigation of any sanction that might be imposed, such as an explanation for his conduct, expression of remorse, evidence that his behavior has changed, or other favorable evidence.

The Hearing Committee feels that the only conclusion that can be reached from the evidence available is that Respondent does not take seriously the role of medical licensing authorities in overseeing his practice of medicine. The Hearing Committee takes

Respondent's failure to attend the hearing or present any evidence in his favor as further evidence of Respondent's disregard for the role of licensing authorities and evidence of his lack of interest in maintaining his New York license. The Department recommended revocation of Respondent's license in this case, and there is nothing in the record to counter this recommendation. Accordingly, the Hearing Committee unanimously determines that Respondent's New York medical license should be revoked.

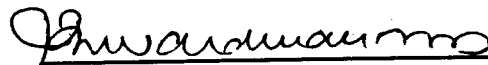
ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **RONALD EDWIN FINCHER, M.D.** is hereby **REVOKED.**

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

DATED: Albany, New York
APRIL 29, 2003



JOHN B. WALDMAN, M.D.
Chairperson

RICHARD N. ASHLEY, 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
RONALD EDWIN FINCHER, M.D.
CO-02-12-6293-A

NOTICE OF
REFERRAL
PROCEEDING

TO: RONALD EDWIN FINCHER, M.D.
2787 Margaret Mitchell Drive, NW
Atlanta, GA 30327

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 24th day of April 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 April 14, 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 April 14, 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

March 31, 2003



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
RONALD EDWIN FINCHER, M.D.
CO-02-12-6293-A

STATEMENT
OF
CHARGES

RONALD EDWIN FINCHER, M.D., the Respondent, was authorized to practice medicine in New York state on June 6, 1993, by the issuance of license number 192340 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 16, 2002, the Arkansas State Medical Board, (hereinafter "Arkansas Board"), by an Order (hereinafter "Arkansas Order"), required Respondent to notify the Arkansas Board prior to resuming any active practice of medicine in Arkansas and to pay \$148.25 costs of investigation, based on violating an order of the Arkansas Board.

B. The conduct resulting in the Arkansas 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 while the license is suspended or inactive);
- ~~2. New York Education Law §6530(15) (failure to comply with an Order of the Board);~~
3. New York Education Law §6530(21) (failing to file a report required by law or by the department of health or the education department); and/or
4. New York Education Law §6530(29) (violating any term of probation or condition or limitation imposed).