



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

August 12, 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

Roy Merle Hutchinson, M.D.
15044 Brentwood Trail
Petersburg, MI 49270

RE: In the Matter of Roy Merle Hutchinson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-214) 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.

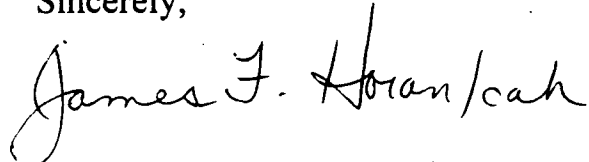
The notice of review served on the Administrative Review Board should be forwarded to:

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 cursive script that reads "James F. Horan/cah". The signature is written in black ink and is positioned above the typed name.

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
ROY MERLE HUTCHINSON, M.D.

DETERMINATION

AND

ORDER

BPNC #03-214

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated May 6, 2003, were served upon the Respondent, **ROY MERLE HUTCHINSON, M.D.** **JOEL H. PAULL, D.D.S, M.D., J.D.**, Chairperson, **ERNST A KOPP, 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 July 23, 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 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 (1), (2), (20), and (21). 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 particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. **ROY MERLE HUTCHINSON, M.D.**, the Respondent, was authorized to practice medicine in New York State on November 6, 1985, by the issuance of license number 164676 by the New York State Education Department (Ex. 4).
2. On December 11, 2002, the State Medical Board of Ohio ("the Ohio Board") issued a document entitled "Findings, Order and Journal Entry" implementing a proposed determination to deny Respondent's application for a certificate to practice medicine and surgery after he failed to request a hearing, despite having received actual notice of the proposed action. The Board's preliminary findings were that Respondent had committed fraud, misrepresentation or deception in applying for an Ohio license, and that he had failed to provide proof of good moral character, by failing to report a number of allegations, investigations, charges and/or complaints against him about which he had been notified by the Iowa Board during the period 1980-1994. The Ohio Board also found that Respondent had failed to cooperate in a Board investigation by failing to answer interrogatories filed upon him (Ex. 5).
3. Although duly notified of the instant hearing, Respondent declined to attend or to provide any explanation for the actions criticized by the Ohio Board (see Ex. A).

HEARING COMMITTEE CONCLUSIONS

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

- New York Education Law §6530(2) (practicing the profession fraudulently);
- New York Education Law §6530(20) (conduct evidencing moral unfitness to practice medicine);

- New York Education Law §6530(21) (making or filing a false report);

The Department also charged that Respondent's conduct would have constituted misconduct in New York, had it occurred here, under subdivision (1) of the statute (obtaining the license fraudulently). The Hearing Committee concludes that this allegation is unfounded, since there is no evidence that Respondent ever obtained a medical license in Ohio fraudulently (his application was denied).

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 his application for a license denied by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the denial 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's application for an Ohio license was denied after he deliberately and falsely answered several questions on the application and thereby withheld information from the Ohio Board about a number of allegations, investigations, charges and/or complaints against him about which he had been notified by the Iowa Board during the period 1980-1994. Respondent also failed to answer interrogatories filed on him by the Ohio Board or to request a hearing to contest the Ohio allegations.

Respondent's actions constitute misconduct as defined in New York Education Law §6530(9)(b) and (d), in that the acts, if committed in New York, would have constituted misconduct under New York Education Law §6530(2), (20) and (21).

Since the Ohio findings and conclusions are binding on this tribunal pursuant to Public Health Law 230(10)(p), the only issue remaining to be decided is the appropriate penalty for Respondent's misconduct. Respondent declined to appear at the instant hearing, and provided no explanation for his failure to answer the questions on his Ohio license application honestly. In a letter to the Department's attorney, Respondent's attorney stated that no disciplinary action had ever been taken against Respondent by the Iowa Board (although charges against him are pending based upon the Ohio Board's action), but this is not a particularly useful piece of information, since it does not explain why he answered the Ohio application questions falsely, and there is no evidence whatever as to the manner in which the various allegations, investigations, charges and/or complaints against him in Iowa were resolved.

The Hearing Committee can find no evidence supporting mitigation of the sanction of revocation of Respondent's New York license proposed by the Department. The Hearing Committee therefore unanimously affirms the appropriateness of this sanction.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **ROY MERLE HUTCHINSON, M.D.** is hereby **REVOKED.**

This **ORDER** shall be effective upon service on the Respondent by personal service or by certified or registered mail pursuant to Public Health Law 230(10)(h).

DATED: Eggertsville, New York

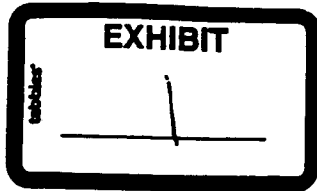
8 August, 2003



JOEL H. PAULL, D.D.S, M.D., J.D.
Chairperson

ERNST A KOPP, 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
ROY MERLE HUTCHINSON, M.D.
CO-03-03-1203-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ROY MERLE HUTCHINSON, M.D.
15044 Brentwood Trail
Petersburg, MI 49270

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 5th day of June 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 May 27, 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 May 27, 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

May 6, 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

ROY MERLE HUTCHINSON, M.D.
CO-03-03-1203-A

STATEMENT

OF

CHARGES

ROY MERLE HUTCHINSON, M.D., the Respondent, was authorized to practice medicine in New York state on November 6, 1985, by the issuance of license number 164676 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about ^{December 13} ~~September~~ 11, 2002, the State Medical Board of Ohio, (hereinafter "Ohio Board"), by a Findings, Order and Journal Entry (hereinafter "Ohio Order"), DENIED Respondent's application for a certificate to practice medicine and surgery, based on fraud, misrepresentation, or deception, making a false, fraudulent, deceptive or misleading statement and failure to cooperate in an investigation conducted by the board.

B. The conduct resulting in the Ohio 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(1) (obtaining the license fraudulently);
2. New York Education Law §6530(2) (practicing the profession fraudulently);
3. New York Education Law §6530(20) (moral unfitness); and/or
4. New York Education Law §6530(21) (making or filing a false report required by the department of health or the education department).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(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(d) by having his license to practice medicine denied or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the denial 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:

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

DATED: *May 6*, 2003
Albany, New York


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