



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 21, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Mahar, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180

Robert Jude O'Brien, M.D.
119-01 West Cow Path Road
Austin, Texas 78727

Robert Jude O'Brien, M.D.
4100 Duval Road, Suite 103
Austin, Texas 78759

RE: In the Matter of Robert Jude O'Brien, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-111) 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.

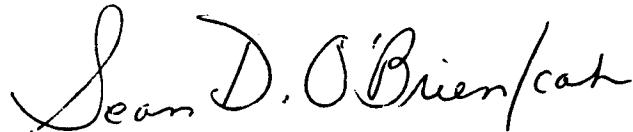
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

IN THE MATTER
OF
ROBERT JUDE O'BRIEN, M.D.

DETERMINATION
AND
ORDER
BPMC #04-111

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated February 4, 2004, were served upon the Respondent, **ROBERT JUDE O'BRIEN, M.D.** **JOEL H. PAULL, D.D.S., M.D.**, Chairperson, **SHELDON H. PUTTERMANN, M.D.** and **MS. FRANCES TARLTON**, 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 21, 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.** and **PAUL ROBERT MAHER, 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 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 Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (7), (8), and (20). 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:

Robert Jude O'Brien, 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. **ROBERT JUDE O'BRIEN, M.D.**, the Respondent, was authorized to practice medicine in New York State on November 14, 1983, by the issuance of license number 156688 by the New York State Education Department (Ex. 4).
2. On June 6, 2003, Respondent entered into an Agreed Order ("the first Texas order") with the Texas State Board of Medical Examiners ("the Texas Board") that suspended his Texas medical license until such time as Respondent satisfied the Board that he was able, physically, mentally, and otherwise, to competently practice medicine. The first Texas order culminated a process initiated by Respondent's self-reporting to the Board that he suffered from a psychiatric condition for which he had had an intensive evaluation and treatment from December 1998 through February, 1999 and ongoing treatment thereafter. The Board concluded that Respondent had committed various acts prohibited by the Texas statutes (Ex. 6).
3. On December 12, 2003, Respondent and the Texas Board entered into another Agreed Order ("the second Texas Order") wherein the suspension of Respondent's license was terminated, and he was placed on probation for five years with extensive conditions, the most important of which is a provision prohibiting him from direct patient contact or care (Ex. 5).
4. The psychiatric condition Respondent suffers from is paraphilia, characterized in his case by voyeurism. This condition manifested itself in Respondent's taking of photographs and videos of female patients unclothed or undressing (Tr. 15).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Texas 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 a mental disability);
- New York Education Law §6530(8) (having a psychiatric condition that impairs the licensee's ability to practice);
- New York Education Law §6530(20) (conduct evidencing moral unfitness);

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 had his license suspended by the Texas Board (the suspension was later stayed and replaced with probation) after he self-reported that he was suffering from paraphilia, characterized by voyeurism, that manifested itself in Respondent's taking of photographs or videos of patients undressing. The actions of the Texas Board constitute the basis for misconduct findings against Respondent as set forth above, since the underlying conduct would have constituted misconduct had it been committed in New York.

Accordingly, the only issue remaining to be decided in this proceeding is the penalty to be imposed by the New York Board. The Hearing Committee's determination regarding penalty is guided in part upon the serious nature of Respondent's problem. However, he also provided candid testimony regarding his problem, self-reported it in the first place and voluntarily sought treatment. Furthermore, according to the second Texas Order, Respondent completed in-patient intensive psychiatric evaluation and treatment from December 1998 through February 1999 at the Behavioral Medicine Institute of Atlanta; continued through the Order's issuance to receive treatment for his condition; completed an evaluation at the Behavioral Medicine Institute in August, 2003; and cooperated with the Board in its investigation.

Given the factors weighing in Respondent's favor, the Hearing Committee determines that revocation or suspension of Respondent's license is unnecessary at this time. However, the Hearing Committee also feels that Respondent should be subject to extended probation, should he return to New York to practice. The terms of this probation are set forth in the attached order.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is placed on **PROBATION** for a period of **FIVE (5)** years, to commence upon Respondent's return to New York State to practice, should he determine to do so. At least 30 days prior to resuming practice in New York, Respondent shall submit written notice of his intention to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299. This notice shall include certified verification from the Texas Board that Respondent has complied in full with the December 5, 2003 order of the Texas Board and any extension or modification thereof, as well as a written authorization for the Texas Board to provide the Director of OPMC with any/all information or documentation as requested by OPMC regarding Respondent's compliance, as well as authorization for OPMC to obtain all evaluation and treatment reports and recommendations from the Behavioral Medicine Institute and any other treating practitioners.
2. The specific terms of Respondent's probation are as follows:
 - A. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. This includes avoidance of any acts of paraphilia or any other sexual conduct involving patients.
 - B. Respondent shall continue to follow any treatment recommendations made prior to his return to New York by treating practitioners for so long as recommended by such practitioners or their successors.
 - C. Respondent shall immediately submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct at the address set forth above; said notice is to include a full description of

any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

D. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

E. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

F. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

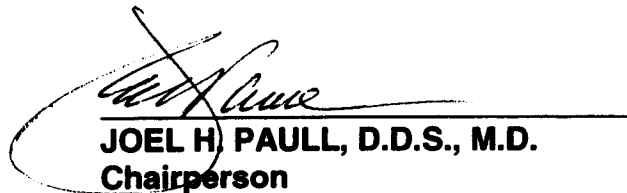
G. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

H. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

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

DATED: Eggertsville, New York

May 19, 2004



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

SHELDON H. PUTTERMANN, M.D.
MS. FRANCES TARLTON

APPENDIX 1

EXHIBIT

AL 4-21-04

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

IN THE MATTER

OF

**ROBERT JUDE O' BRIEN, M.D.
CO-03-08-3787-A**

NOTICE OF

REFERRAL

PROCEEDING

TO: ROBERT JUDE O' BRIEN, M.D.
 119-01 West Cow Path Road
 Austin, TX 78727

ROBERT JUDE O' BRIEN, M.D.
4100 Duval Road, Suite 103
Austin, TX 78759

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.

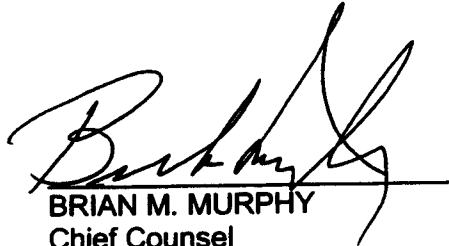
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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 4, , 2004



BRIAN M. MURPHY
Chief 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
ROBERT JUDE O' BRIEN, M.D.
CO-03-08-3787-A

STATEMENT
OF
CHARGES

ROBERT JUDE O' BRIEN, M.D., the Respondent, was licensed to practice medicine in New York state on April 11, 1983, by the issuance of license number 156688 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 6, 2003, the Texas State Board of Medical Examiners (hereinafter "Texas Board"), by an Agreed Order (hereinafter "Texas Order"), SUSPENDED Respondent's license to practice medicine until such time as Respondent requests, in writing, to have the suspension lifted or stayed, and personally appears before the Texas Board and is determined by the Texas Board, to be physically, mentally, and otherwise competent to safely practice medicine, based on Respondent committing a prohibited act or practice, based upon unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.

B. The conduct resulting in the Texas 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 a mental disability);
2. New York Education Law §6530(8) (having a psychiatric condition which impairs the licensee's ability to practice); and/or
3. New York Education Law §6530(20) (moral unfitness).

SPECIFICATIONS
FIRST SPECIFICATION

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

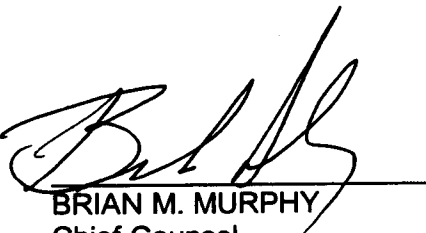
1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

DATED:  , 2004
Albany, New York


BRIAN M. MURPHY
Chief Counsel
Bureau of Professional Medical Conduct