



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 27, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stuart Edwin Strausberg, D.O.
11718 Barrington Court
Los Angeles, California 90009

Carolyn Shearer, Esq.
Bond, Schoeneck & King, PLLC
111 Washington Avenue
Albany, New York 12110-2211

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 Stuart Edwin Strausberg, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-199) 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.

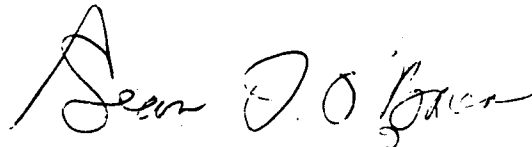
The notice of review served on the Administrative Review Board should be forwarded to:

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 cursive script that reads "Sean D. O'Brien". The signature is written in dark ink and is positioned above the printed name and title.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

COPY

IN THE MATTER
OF
STUART EDWIN STRAUSBERG, D.O.

DETERMINATION

AND

ORDER

BPMC NO. 04-199

A hearing was held on August 18, 2004, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated June 21, 2004, were served upon the Respondent, **Stuart Edwin Strausberg, D.O.** Pursuant to Section 230(10)(e) of the Public Health Law, **William P. Dillon, M.D.**, Chairperson, **Fred S. Levinson, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by Bond, Schoeneck & King, 111 Washington Avenue, Albany, New York 12210-2211, **Carolyn Shearer, Esq.**, of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 State 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 Section 6530(9)(b) and (d). Copies of 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:

Stuart Edwin Strausberg, D.O.

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. Stuart Edwin Strausberg, D.O., the Respondent, was authorized to practice medicine in New York State on July 12, 1974, by the issuance of license number 120721 by the New York State Education Department (Petitioner's Ex. 4).

2. On March 22, 2004, the Osteopathic Medical Board of California, Department of Consumer Affairs ("California Board"), by a Decision and Order ("California Decision"), revoked the Respondent's license to practice medicine, stayed the revocation, and placed him on five years probation (which was in addition to a term of probation that he was serving pursuant to a previous disciplinary proceeding). The Respondent will be on probation in California until July 15, 2012. The terms of probation include the payment of \$5000.00 in costs for investigation and prosecution; a prohibition against prescribing, administering, dispensing or possessing controlled substances (with two narrow exceptions); enrollment and participation in California's Diversion Program; abstention from the use or possession of controlled substances and alcohol; submission to drug testing; psychiatric treatment; and the successful completion of several continuing medical education courses. (Petitioner's Ex. 5).

3. The basis for the California Decision was the Respondent's use of cocaine and his violation of drug statutes (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(8) - "... being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects ...;"

- New York Education Law Section 6530(16) - "A willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules, or regulations governing the practice of medicine;" and

- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine..."

Regarding New York Education Law Section 6530(16), the statutes violated are the California statutes making the possession and use of cocaine a crime. The Respondent argued that these statutes are not statutes "governing the practice of medicine" because they do not address the subject of the practice of medicine. The Respondent's position is that only statutes and regulations that specifically regulate the practice of medicine are covered by Section 6530(16). This Hearing Committee disagrees. Any statutory violation that has the potential to affect negatively a physician's ability to provide medical care violates Section 6530(16). The use of cocaine definitely has such negative potential and the California criminal statutes regarding cocaine, therefore, are statutes within the meaning of Section 6530(16).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 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 Section 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..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

On July 16, 2002, the California Board, in a disciplinary action preceding the California disciplinary proceeding at issue in this hearing, placed the Respondent on probation for five years. The Respondent violated the terms of that initial probation in September 2002 by using cocaine. (He injected intravenous cocaine into both his arms.) A violation of probation proceeding was initiated in California, the result of which was the California Decision, issued on March 22, 2004. In that decision, the California Board added five more years to the Respondent's period of probation. The Respondent will be on probation in California until July 15, 2012.

The Petitioner recommended that the Respondent's license to practice medicine be revoked and this Hearing Committee gave serious thought to imposing this penalty. The September 2002 cocaine incident was not an isolated occurrence; the Respondent used cocaine illegally for many years prior to that event. The Hearing Committee is particularly concerned about the fact that the Respondent's September 2002 cocaine incident was a violation of his initial California probation order committed only two months into that period of probation. The Respondent testified that he has not used cocaine since October 2002 and has taken steps to remain abstinent, including twelve step programs, psychiatric counseling, submitting to random urine tests, and living in a sober living home (a supervised home for people in recovery). However, the Respondent's corroborating evidence on this subject is remarkably fragmentary. For instance, a July 19, 2004, letter from Leon Wallace, M.D., the Respondent's psychiatrist, states that the Respondent is ready to resume medical practice without limitations, but the letter consists of only two

sentences (Respondent's Ex. C). An August 13, 2004, letter from Steve Woodward, a Compliance Monitor with Maximus, the substance abuse diversion program attended by the Respondent, provides more information than the psychiatrist's letter and does state several positive things about the Respondent's recovery, but the letter states that the Respondent has been in this program since August 9, 2004 (Respondent's Ex. A). This apparent typographical error deprives the Hearing Committee of information from the Maximus staff concerning how long the Respondent has been under their supervision and how long the Respondent has been compliant with their requirements. There is no letter from the staff of the sober living home.

This Hearing Committee was concerned about the extent and durability of the Respondent's rehabilitation. He has not been in rehabilitation for a long enough period to permit a conclusion that it will be successful in the long term. Also, during his testimony, he did not exhibit an understanding of the gravity of his problem and the difficulty of the process necessary to maintain abstinence from cocaine use. The Respondent showed more interest in his efforts to help other addicts than in the difficulties inherent in maintaining his own sobriety.

In the Respondent's favor, there is no evidence that the Respondent was ever under the influence of cocaine while performing medical duties. There also is evidence that the Respondent is not using cocaine and is complying with the terms of the California Decision (although not as much evidence as the Hearing Committee would like to see).

The Respondent's license to practice medicine will not be revoked. Instead, a stayed revocation will be imposed and the Respondent's license will be suspended for two years. Conditions, stated in the Order below, will be imposed for resuming medical practice in New York State upon the expiration of the period of suspension. If those conditions are met, the Respondent will be allowed to practice medicine on probation for

life. If the Respondent does not meet the conditions stated in the Order, the stay of the revocation of the Respondent's license will be removed and the revocation will be in full effect.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine is revoked. The revocation is stayed.

2. The Respondent's license to practice medicine is suspended for two years.

3. Upon completion of the suspension, the stay will be removed from the revocation of the Respondent's license, unless the following conditions are met:

a. The Respondent must submit to the Petitioner's Office of Professional Medical Conduct ("OPMC") a letter from the California Board stating that the Respondent is in compliance with all the requirements of the California Decision. The letter must be dated no earlier than 120 days prior to the expiration of the period of suspension and must be received by OPMC no later than 60 days prior to the expiration of the period of suspension;

b. The Petitioner must submit to OPMC an evaluation by a psychiatrist acceptable to OPMC. The evaluation must contain a conclusion that the Respondent suffers from no psychiatric condition that prevents him from practicing medicine competently. The evaluation must be dated no earlier than 120 days prior to the expiration of the period of suspension and must be received by OPMC no later than 60 days prior to the expiration of the period of suspension;

c. The Respondent must submit to OPMC a clinical assessment of the quality of the medical care provided by the Respondent. The assessment must be prepared by an entity acceptable to OPMC. The assessment must be dated no

earlier than 120 days prior to the expiration of the period of suspension and must be received by OPMC no later than 60 days prior to the expiration of the period of suspension.

4. All expenses incurred in achieving compliance with paragraph 3 of this Order are the responsibility of the Respondent.

5. If the Respondent meets the requirements of paragraph 3 of this Order, the stay of the revocation of his license will remain in effect and he will be placed on probation for life pursuant to the terms of probation in paragraphs 6 through 19 of this Order.

6. The Respondent shall remain drug and alcohol free.

7. If the Respondent returns to the practice of medicine in New York State, the Respondent, prior to the resumption of such practice, shall obtain the services of a sobriety monitor acceptable to OPMC. The Respondent shall submit to random testing for alcohol and drug use conducted by the sobriety monitor at a frequency chosen by the monitor, but in no case less often than twice a week. After two years of such monitoring, OPMC may authorize less frequent monitoring, but may not dispense with sobriety monitoring as long as the Respondent practices medicine in New York State.

8. The Respondent shall provide a written authorization for the sobriety monitor to provide OPMC with all information or documentation requested by OPMC to determine whether the Respondent is in compliance with the monitoring requirement. The sobriety monitor must submit quarterly reports to OPMC documenting the results of the alcohol and drug tests.

9. The Respondent shall authorize the sobriety monitor to report to OPMC within 48 hours if the Respondent refuses to comply with the monitoring requirement, if

there is a positive test for alcohol or drugs, or if the Respondent's behavior or condition causes the monitor to conclude that the Respondent is an imminent danger to the public.

10. If the Respondent returns to the practice of medicine in New York State, during the first two years of such practice, the Respondent shall practice medicine only when monitored by a practice monitor, who must be a licensed physician, board certified in an appropriate specialty, proposed by the Respondent and subject to the written approval of OPMC. An approved practice monitor must be in place prior to the Respondent's resumption of the practice of medicine in New York State.

11. The Respondent shall make available to the practice monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit the Respondent's medical practice at each and every location, on a random, unannounced basis at least monthly and shall examine at least twenty records maintained by the Respondent, including patient records, prescribing information and office records. The purpose of this review is to determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 48 hours to OPMC.

12. The practice monitor must submit quarterly reports to OPMC that disclose the practice monitor's findings regarding the quality of the medical care provided by the Respondent.

13. The Respondent is solely responsible for all expenses associated with the sobriety monitor and the practice monitor, including the fees charges by the monitors.

14. If the Respondent resumes the practice of medicine in New York State, the Respondent shall maintain medical malpractice insurance coverage with limits no less

than \$2,300,000.00 per occurrence and \$6,900,000.00 per policy year, in accordance with Public Health Law Section 230(18)(b). Proof of coverage shall be submitted to OPMC prior to the Respondent's resumption of the practice of medicine in New York State.

15. The 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 profession. If, during the period of probation, the Respondent commits professional misconduct as enumerated in New York State Education Law Sections 6530 or 6531, such act shall be deemed a violation of probation and an action may be taken against the Respondent's license pursuant to New York State Public Health Law Section 230(19).

16. The Respondent shall submit to OPMC written notification of any change in 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.

17. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order and shall personally meet with a person designated by OPMC when so requested.

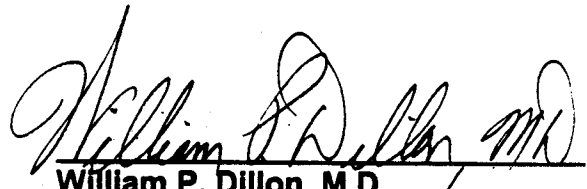
18. The sobriety monitoring and practice monitoring requirements shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. The Respondent shall notify OPMC, in writing, if the Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of 30 consecutive days or more. The Respondent shall notify OPMC

again prior to any change in that status. The sobriety monitoring and practice monitoring requirements shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the Respondent's return to practice in New York State.

19. Upon receipt of evidence of noncompliance with the terms of probation, OPMC or the State Board for Professional Medical Conduct may initiate a violation of probation proceeding and/or any other proceeding against the Respondent as may be authorized by law.

20. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

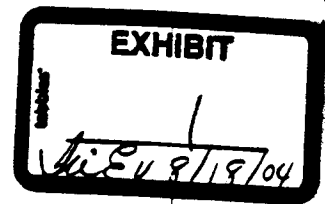
DATED: Buffalo, New York
August 26th, 2004


William P. Dillon, M.D.
Chairperson

Fred S. Levinson, M.D.
Sister Mary Theresa Murphy

APPENDIX I

ORIGINAL



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

IN THE MATTER

OF

**STUART EDWIN STRAUSBERG, D.O.
CO-02-08-4169-A**

**NOTICE OF
REFERRAL
PROCEEDING**

**TO: STUART EDWIN STRAUSBERG, D.O.
11718 Barrington Court
Los Angeles, CA 90009**

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 July 2004, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 5th Floor, 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 July 12, 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 July 12, 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

June 21, 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
STUART EDWIN STRAUSBERG, D.O.
CO-02-08-4169-A

STATEMENT
OF
CHARGES

STUART EDWIN STRAUSBERG, D.O., the Respondent, was authorized to practice medicine in New York state on July 12, 1974, by the issuance of license number 120721 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 22, 2004, the Osteopathic Medical Board of California, Department of Consumer Affairs, State of California (hereinafter "California Board"), by a Decision and Order, revoked Respondent's license to practice medicine, stayed the revocation, and placed him on five (5) years additional probation, through July 15, 2012, with terms and conditions, to include, inter alia, that he comply with the California Board's Surveillance program, that he pay an additional \$5,000.00 costs of investigation and prosecution, that he not prescribe, administer, dispense, order or possess any controlled substances except for those drugs listed in Schedule IV which are non-narcotic and are solely obtained, possessed, and administered in the performance of radiologic examinations and a limited supply of Schedule III anaphylactic agents for emergency use in connection with radiologic examinations, that he surrender his DEA permit for cancellation and apply for a limited DEA permit, that he enroll and participate in the California Board's Diversion Program, that he abstain completely from personal use or possession of controlled substances and dangerous drugs and the use of alcoholic beverages, that he submit to biological fluid testing, that he successfully complete a Prescribing Practices Course, a minimum of twenty five (25) hours of CME in pharmacology and/or prescribing practices, and a medical ethics course, that he take a comprehensive Osteopathic Medical Variable-Purpose Examination, that he undergo and continue treatment with a psychotherapist, that he undergo a medical evaluation, and that he undergo and continue

medical treatment, based on use of controlled substances, namely cocaine, and violation of drug statutes.

B. The conduct resulting in the California 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 (8) (being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects);
2. New York Education Law §6530 (16) (willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine); 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 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(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:

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

DATED: *June 21*, 2004
Albany, New York


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