



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

July 27, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Maher A. Eter, M.D.
P.O. Box 3643
Security Forces Hospital
Anesthesia Department
Riyadh, Saudi Arabia 11481

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Maher A. Eter, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-166) 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 style with a large initial "S" and "O".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

IN THE MATTER
OF
MAHER A. ETER, M.D.

DETERMINATION
AND
ORDER
BPMC #04-166

A hearing was held on March 1, 2004, and July 20, 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 December 22, 2003, were served upon the Respondent, **MaHER A. Eter, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Robert A. Menotti, M.D.**, Chairperson, **Arsenio G. Agopovich, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Paul Robert Maher, Esq.**, and **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and represented himself on the first day of the hearing. On the second day of the hearing, the Respondent did not appear and was unrepresented.

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 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: 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. Maher A. Eter, M.D., the Respondent, was authorized to practice medicine in New York State on May 14, 1996, by the issuance of license number ~~20299TT~~ ²⁰²⁹⁹¹ by the New York State Education Department (Petitioner's Ex. 4).

2. On June 20, 2003, the Florida Board of Medicine ("Florida Board"), by a Final Order ("Florida Order"), suspended the Respondent's license to practice medicine, based on his failing to practice medicine with the level of care, skill and treatment recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances (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(4) - "Practicing the profession with gross negligence on a particular occasion;" and
- New York Education Law Section 6530(6) - "Practicing the profession with gross incompetence..."

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 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 of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Respondent was scheduled to appear before the Florida Board regarding a professional misconduct charge on June 6, 2003. The Respondent did not appear on that date. In response, the Florida Board issued the Florida Order on June 20, 2003. The Florida Order suspended the Respondent's license to practice medicine "until such time as he appears before the Board and demonstrates the ability to practice medicine with skill and safety." (Petitioner's Ex. 5).

Based on the Florida Order, the Petitioner commenced the present professional misconduct proceeding against the Respondent. The Petitioner sought to discipline the Respondent pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(b) and (d), which authorize the imposition of discipline on a physician in New York State who has been disciplined in another State, provided that the act of professional misconduct in the other State would also constitute professional misconduct in New York State, had the act occurred here.

On the first day of the hearing, the Respondent stated that he intended to appeal the Florida Order. This Hearing Committee granted him an adjournment to give him an opportunity to do so. The Respondent was warned that he needed to pursue the Florida appeal with no undue delay.

Over the subsequent months, contacts between the Petitioner's attorneys and employees of the Florida Board (Petitioner's Ex. 6A, 7 and 10) disclosed that the Respondent has not made a conscientious effort to have the Florida hearing rescheduled. The Respondent requested that the Florida Board reschedule his case for a hearing. On

April 16, 2004, an employee of the Florida Board told the Respondent that he could have a new hearing, but that he was required to pay costs associated with the Florida Order prior to the scheduling of the hearing. The Respondent has not paid these costs and has not contacted the Florida Board since April 16, 2004. The Florida Board considers the case to be closed.

On June 29, 2004, the Respondent sent an e-mail to April T. Soltren, an employee of the Petitioner, informing her that he would not be able to attend the second day of the hearing because of a "family crisis" (Petitioner's Ex. 9). No description of the crisis was provided and there was no explanation of why a crisis on June 29, 2004, prevented his attendance at a hearing to be held three full weeks later. Given this problem with the Respondent's explanation for his absence plus his failure to pursue his appeal in Florida, the Hearing Committee determined that the second day of the hearing could proceed despite the Respondent's absence.

Regarding the charges against the Respondent, the Hearing Committee concludes that the Respondent committed gross negligence and gross incompetence. On August 28, 2000, while performing a pleurodesis procedure on a patient, the Respondent injected the patient with an excessive amount of Lidocaine (50 c.c. of 10% Lidocaine mixed with four grams talc plus 50 c.c. normal saline solution). This was, in fact, a lethal dose of Lidocaine. The patient experienced a seizure and died three days later. The autopsy listed the cause of death as "complication of Lidocaine toxicity" (Petitioner's Ex. 5).

The Respondent introduced no evidence on the first day of the hearing and, as stated above, was not present on the second day. Therefore, the hearing record contains no evidence of mitigating circumstances, rehabilitation or remorse. The Petitioner recommended that the Respondent's license to practice medicine be revoked and there is

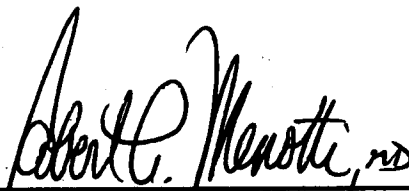
nothing in the hearing record to suggest that any lesser penalty would be sufficient to protect patients in New York State. The Respondent's license will be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Clinton, New York
July 22, 2004

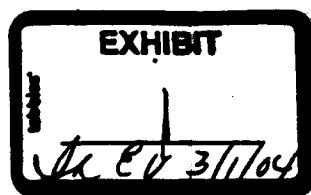


Robert A. Menotti, M.D.
Chairperson

Arsenio G. Agopovich, M.D.
Nancy J. Macintyre, R.N., Ph.D.

APPENDIX I

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



IN THE MATTER
OF
MAHER A. ETER, M.D.
CO-03-08-3753-A

NOTICE OF **ORIGINAL**
REFERRAL
PROCEEDING

TO: MAHER A. ETER, M.D.
Apt. 1 Nassau Road
Yonkers, NY 10701

MAHER A. ETER, M.D.
P.O. Box 3643
Security Forces Hospital
Riyadh, Saudi Arabia

METER@SFH.MED.SA

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 January 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 January 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 January 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
December 22, 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

MAHER A. ETER, M.D.
CO-03-08-3753-A

STATEMENT

OF

CHARGES

MAHER A. ETER, M.D., the Respondent, was authorized to practice medicine in New York state on May 14, 1996, by the issuance of license number 202991 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 20, 2003, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), SUSPENDED Respondent's license to practice medicine, based on failing to practice medicine with that level of care, skill, and treatment recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

B. The conduct resulting in the Florida Board disciplinary action 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(4) (gross negligence); and/or
2. New York Education Law §6530(6) (gross incompetence).

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 suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension of 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: *Dec. 22*, 2003
Albany, New York


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