



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

*Public*

Dennis P. Whalen  
Executive Deputy Commissioner

December 16, 2005

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Alan Vanderwalde, M.D.  
19 Spruce Hill Lane  
Goshen, New York 10924

Wilfred T. Friedman, Esq.  
Friedman and Mahdavian  
The Bar Building  
36 West 44<sup>th</sup> Street, Suite 816  
New York, New York 10036

Robert Bogan, Esq.  
Joel Abelove, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
Hedley Building  
433 River Street, Suite 303  
Troy, New York 12180-2299

**RE: In the Matter of Alan Vanderwalde, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 05-288) 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 Respondent 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 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

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

**COPY**

IN THE MATTER  
OF  
**ALAN VANDERWALDE, M.D.**

DETERMINATION  
AND  
ORDER

BPMC NO. 05-288

A Notice of Referral Proceeding and Statement of Charges, both dated September 13, 2005, were served upon the Respondent, **ALAN VANDERWALDE, M.D.** **MOHAMMAD GHAZI-MOGHADAM, M.D.**, Chairperson, **JILL M. RABIN, M.D.** and **MR PETER S. KOENIG, SR.**, 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 October 20, 2005, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. Deliberations were held on October 20, 2005 and November 16, 2005. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **JOEL ABELOVE, ESQ.**, of Counsel. The Respondent appeared in person and by **WILFRED T. FRIEDMAN, ESQ.**

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)(a)(i), based upon his conviction of a crime under New York State law. 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:

Dr. Beth Caton  
Harley McDevitt  
Rabbi Abba Gorelick  
Respondent

### 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 unless otherwise specified.

1. **ALAN VANDERWALDE, M.D.**, the Respondent, was licensed to practice medicine in New York State on October 21, 1977, by the issuance of license number 132894 by the New York State Education Department. (Ex. 1)
2. On April 14, 2005, Respondent was convicted, pursuant to a guilty plea, of the Class A misdemeanor crime of Possession of a Controlled Substance in the 7<sup>th</sup> degree. He was sentenced to probation of three years, and the imposition of a fee and surcharge totaling \$160.00.
3. Respondent voluntarily surrendered his license to practice medicine in September, 2005 after the arrest that led to his conviction. (Tr. 18; Ex. A) As of the date of this hearing Respondent's license had not been restored by a restoration committee of the New York State Board for Professional Medical Conduct pursuant to §230(13)(a) of the Public Health Law.

### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that Respondent's conviction of a crime under New York State law constitutes misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(i), and that the appropriate penalty for this misconduct is the issuance of a censure and reprimand

## VOTE OF THE HEARING COMMITTEE

### **SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of a crime under New York State law.

**VOTE: SUSTAINED (3-0)**

### HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent was convicted in New York State of the crime of Possession of a Controlled Substance in the 7<sup>th</sup> degree. This conviction forms the basis for a finding of professional misconduct under Education Law Sections 6530(9)(a)(i). Accordingly, pursuant to Public Health Law §230(10)(p), the only issue to be addressed in this proceeding is the penalty to be imposed for the misconduct.

The Hearing Committee determines that the appropriate penalty for this misconduct is, under the circumstances presented, and discussed below, a Censure and Reprimand. The Hearing Committee has arrived at this conclusion after careful consideration of the range of penalties set forth in Public Health Law §230-a, including:

- (1) Censure and reprimand; (2) Suspension of the license, wholly or partially;
- (3) Limitations of the license to a specified area or type of practice;
- (4) Revocation of the license; (5) Annulment of the license or registration;
- (6) Limitations on registration or the issuance of any further license; (7) The imposition of monetary penalties; (8) A course of education or training;
- (9) Performance of public service, and (10) Probation.

Although the criminal conviction is a serious matter justifying the imposition of a significant sanction, the Hearing Committee does not feel that revocation is commensurate with the severity of the crime for which Respondent was convicted (a misdemeanor). Furthermore, suspension in this instance would be meaningless, since Respondent

voluntarily surrendered his license after his arrest, and since Respondent has not yet received the approval of a license restoration committee to restore his unfettered license, pursuant to §230(13)(a) of the Public Health Law.

This section provides that a licensee who is temporarily incapacitated for the active practice of medicine, and who has not harmed any patients as a result of the incapacity, may voluntarily surrender his license. This section also provides that the license may not be restored until the licensee demonstrates to the satisfaction of the restoration committee that the licensee is no longer so incapacitated, but that reasonable conditions may be imposed on the licensee if it is determined that, due to the nature and extent of the licensee's former incapacity, such conditions are necessary to protect the health of the people.

In the instant case, the Department's case was predicated solely upon the criminal conviction, not upon Respondent's possible incapacity to practice medicine or upon his abuse of controlled substances (see Education Law Section 6530(7) and (8)). Given this fact (and given the very limited scope of the instant hearing), and given the fact that that Respondent's license has been temporarily surrendered and that the issue of his ability to practice safely must be decided in his favor by a restoration committee before he can practice again, suspension of the license by this Hearing Committee would be meaningless. Furthermore, the imposition of probation by the instant Hearing Committee would be inappropriate, since any probationary conditions that need to be imposed against Respondent will be imposed by a restoration committee, when and if his license is ultimately restored, based upon the circumstances extant at that time.

The sanction of Censure and Reprimand is the penalty that the Hearing Committee concludes is the most appropriate to impose for the criminal conviction, given the current state of Respondent's license.



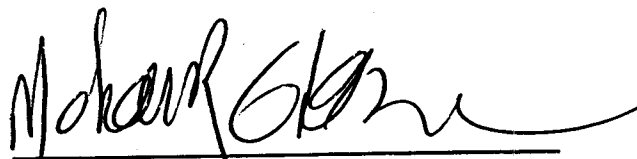
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. A **CENSURE AND REPRIMAND** are hereby imposed against **ALAN VANDERWALDE, M.D.**

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

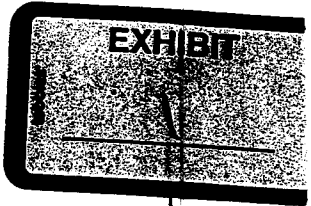
**DATED: Amsterdam, New York**  
Dec. 15th, 2005



**MOHAMMAD GHAZI-MOGHADAM, M.D.**  
Chairperson

**JILL M. RABIN, M.D.**  
**MR. PETER S. KOENIG, SR.**

# APPENDIX 1



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

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IN THE MATTER  
  
OF  
  
ALAN VANDERWALDE, M.D.  
CO-04-11-5928-A

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NOTICE OF  
  
REFERRAL  
  
PROCEEDING

TO: ALAN VANDERWALDE, M.D.  
19 Spruce Hill Lane  
Goshen, NY 10924

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure 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 20<sup>th</sup> day of October 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> 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, 5<sup>th</sup> 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 October 10, 2005.

Pursuant to the provisions of New York 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 October 10, 2005, 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

*September 13*, 2005



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

ALAN VANDERWALDE, M.D.  
CO-04-11-5928-A

STATEMENT

OF

CHARGES

ALAN VANDERWALDE, M.D., the Respondent, was authorized to practice medicine in New York state on October 21, 1977, by the issuance of license number 132894 by the New York State Education Department.

**FACTUAL ALLEGATIONS**


A. On or about April 14, 2005, in the Supreme Court, County of Orange, New York, Respondent was found guilty, based on a plea of guilty, of Criminal possession of a controlled substance in the seventh degree, in violation of New York Penal Law §220.03, a class A misdemeanor, and was sentenced to three (3) years probation and a \$160.00 surcharge and fee.

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Sept. 13*, 2005  
Albany, New York

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