



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

October 11, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Robert S. Asher, Esq.
295 Madison Avenue
Suite 700
New York, New York 10017

George A. Carr, M.D.
39 Altamont Avenue
Tarrytown, New York 10591

George A. Carr, M.D.
339 East Fordham Road
Bronx, New York 10458

RE: In the Matter of George A. Carr, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-240) 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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER
OF
GEORGE A. CARR, M.D.

DETERMINATION

AND

ORDER

BPMC #01-240

A hearing was held on September 20, 2001, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Hearing, dated May 3, 2001, and a Statement of Charges, dated May 2, 2001, were served upon the Respondent, **George A. Carr, M.D.** **Ernst A. Kopp, M.D.**, Chairperson, **Jagdish M. Trivedi, M.D.**, and **Ms. Nancy Morrison**, 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. **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.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Robert S. Asher, Esq.**, 295 Madison Avenue, Suite 700, New York, New York 10017.

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)(a)(i). A copy of the Commissioner's Order and Notice of Hearing and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

George A. Carr, 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. George A. Carr, M.D., the Respondent, was authorized to practice medicine in New York State on October 22, 1986, by the issuance of license number 168291 by the New York State Education Department (Petitioner's Ex. 4).

2. On March 7, 2001, in the Supreme Court of the State of New York, County of Bronx, the Respondent was found guilty, on a plea of guilty, of Attempted Sale of a Prescription for a Controlled Substance, a felony, and, on April 26, 2001, was sentenced to six months incarceration, four years, six months probation and restitution of \$360.00 (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York State law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Respondent pled guilty to and was convicted of Attempted Sale of a Prescription for a Controlled Substance. The Respondent admitted that he was guilty of this crime, but testified that there were mitigating circumstances involved in the crime. He testified that he first saw the patient in question on October 20, 2000. (The patient was really an undercover investigator, a fact unknown to the Respondent prior to his arrest.) The patient complained of anxiety and Methadone withdrawal symptoms. The patient requested a prescription for Xanax, in response to which the Respondent wrote a prescription for 60 tablets (two a day for thirty days). On November 1, 2000, the patient returned, said that he was out of Xanax and asked for another Xanax prescription. According to the Respondent's testimony, the patient's explanation for running out of the medication long before the thirty day period had elapsed was that he had mistakenly taken too many tablets per day and that his wife had taken some of the tablets.

The Respondent testified that he suspected that this explanation was untrue and that the patient was addicted to Xanax. However, according to the Respondent, he did not simply refuse to refill the prescription because he feared that if the patient was deprived of Xanax completely, he might suffer serious withdrawal symptoms. Therefore, the Respondent testified, he wrote another prescription for Xanax, but put the prescription in the name of the patient's wife. According to the Respondent, this was a ploy that was supposed to cause the patient to admit that he had no wife and that he had an addiction to Xanax. The Respondent claimed that knew that the patient, if he was an addict and had no wife, would not leave the Respondent's office with a prescription for an imaginary person, a prescription that could not be filled. The patient might then admit his addiction to the Respondent and the Respondent could then treat the patient effectively. According to the Respondent, he knew that writing a prescription for the wife, a person who was not his patient, was illegal, but he did this in an attempt to help his patient.

This explanation makes no sense. The Respondent testified that the patient had told him that he had been buying Xanax on the street. If there had been no wife, the patient would not have needed to admit the lie to the Respondent to get more Xanax; he could simply have gone back to buying the drug on the street or could have gone to another physician. Also, although the story about the wife using some of the tablets may have been suspect, it does not follow that there was a reason to believe that there was no wife. The majority of men are married and there is no reason to assume that the patient did not have a wife because the patient told a lie about her drug use. There is also no reason to assume that the wife would have been unwilling to use the prescription to obtain Xanax for her husband. The Respondent, with a very good reason to believe that the first Xanax prescription had been abused, let the patient leave his office with another Xanax prescription that was equally likely to be abused.

The Respondent's explanation for his actions on November 1, 2000, is placed in further doubt by the fact that the patient, when asked for his wife's name, gave the Respondent the name of a woman whose last name was not the same as the patient's. Of course, many wives do not take their husbands' last names. However, it is equally true that most women who are not married to the patient also do not share his last name. The Respondent would have no way of knowing whether he was writing a prescription for the patient's wife or some other woman in the patient's apartment building willing to help the patient abuse Xanax.

Another reason for doubting the Respondent's credibility was revealed during cross-examination. The Respondent was asked whether he had suggested to the patient on November 1, 2000, that it was too soon for the patient to get another Xanax prescription, so the prescription needed to be in his wife's name. The Respondent denied that this had been said. When the Petitioner's attorney responded that he had a videotape of the November 1, 2000, visit of the patient to the Respondent's office, the Respondent's memory immediately improved and he admitted that he might have said this. The Respondent's demeanor at this point in the proceedings demonstrated that he was shaken because he had been caught in a lie.

In November of 2000, the Respondent had a sign in the reception area of his office that said, "One Prescription \$100 – Two Prescriptions \$150." The Respondent's explanation for this sign, that it was intended to discourage drug addicts from seeking controlled substance prescriptions from him, was as unbelievable as his explanation for the November 1, 2000, prescription. The purpose of the sign was to notify patients that the Respondent would trade controlled substance prescriptions for cash. This was his true motivation on November 1, 2000, not a concern for the patient's health.

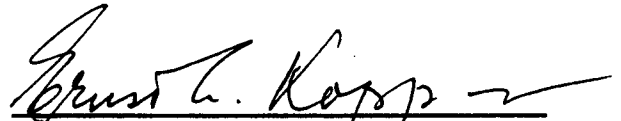
The Respondent made arguments about his otherwise clean record and the punishment that he had already suffered in the criminal proceeding and the present disciplinary proceeding as being reasons for a minor penalty. These arguments are overwhelmed by the nature of the Respondent's crime. Nothing short of a revocation of the Respondent's license would be a penalty adequate to protect the patients of New York State.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is revoked.
2. 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: Loudonville, New York
Oct 5th, 2001


Ernst A. Kopp, M.D.
Chairperson

Jagdish M. Trivedi, M.D.
Nancy Morrison

APPENDIX I

EV 9/20/01

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

IN THE MATTER
OF
GEORGE A. CARR, M.D.
CO-00-12-5767-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: GEORGE A. CARR, M.D.
39 Altamont Avenue
Tarrytown, NY 10591

GEORGE A. CARR, M.D.
339 East Fordham Road
Bronx, NY 10458

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto, and made a part hereof, has determined that George A. Carr, M.D., has pleaded to and been found guilty of committing an act constituting a felony under New York State law.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, George A. Carr, M.D., Respondent, shall not practice medicine in the State of New York. This order shall remain in effect unless modified or vacated by the Commissioner of Health, pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 15th day of May, 2001 at 10:00 am in the forenoon at Hedley Park Place, 5th Floor, 433 River Street, Troy, New York and at such other adjourned dates, times, and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. Such evidence or sworn testimony shall be 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 jurisdiction, evidence may be offered which would show that 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. A summary of the Department of Health Hearing Rules is enclosed. 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.

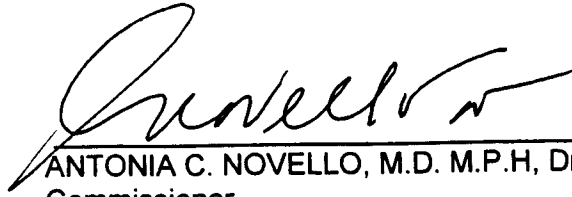
The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction to be imposed, or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED, AND/OR THAT
YOU MAY BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE
URGED TO OBTAIN AN ATTORNEY FOR THIS
MATTER.**

DATED: Albany, New York

MAY 3 ,2001



ANTONIA C. NOVELLO, M.D. M.P.H, Dr. P.H.,
Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

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

IN THE MATTER
OF
GEORGE A. CARR, M.D.
CO-00-12-5767-A

STATEMENT
OF
CHARGES

GEORGE A. CARR, M.D., the Respondent, was authorized to practice medicine in New York State on October 22, 1986, by the issuance of license number 168291 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about March 7, 2001, in the Supreme Court of the State of New York, Criminal Term, Part N, County of Bronx, the Respondent was found guilty, on a plea of guilty, of Attempted sale of a prescription for a controlled substance, a felony, and on or about April 26, 2001, was sentenced to six (6) months jail, five (5) years probation, and \$360.00 restitution.

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: *May 2*, 2001
Albany, New York


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