

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

December 14, 1989

Robert Scott Carson, Physician
P.O. Box 725
Lyndhurst, N.J. 07071

Re: License No. 077691

Dear Dr. Carson:

Enclosed please find Commissioner's Order No. 9999. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

MOIRA A. DORAN
Supervisor

DJK/MAD/mn
Enclosures

CERTIFIED MAIL- RRR

cc: Donald O. Clark, Esq.
Kaplan, Russin & Vecchi
1215 17th Street, N.W.
Washington, D.C. 20036

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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

ROBERT SCOTT CARSON

CALENDAR NO. 9999



The University of the State of New York

IN THE MATTER
of the
Disciplinary Proceeding
against

ROBERT SCOTT CARSON

No. 9999

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

ROBERT SCOTT CARSON, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On September 7, 1989, the scheduled date of our hearing, respondent appeared before us in person and was represented by his attorneys, Donald O. Clark, Esq., and Vera A. Rechsteiner, Esq. E. Marta Sachey, Esq., represented the Department of Health.

Petitioner's recommendation as to the penalty to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be revoked.

Respondent's recommendation as to the penalty to be imposed, should respondent be found guilty, was that respondent's ability to prescribe controlled substances be restricted.

We have reviewed the record in this matter; and our unanimous

ROBERT SCOTT CARSON (9999)

findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed follow:

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. Respondent was convicted of committing an act constituting a crime under Federal law, as set forth in the statement of charges and the record herein.

DETERMINATION AS TO GUILT

The charge contained in the statement of charges, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven by a preponderance of the evidence and respondent is guilty thereof.

**RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED**

Respondent's license to practice as a physician in the State of New York be revoked upon the charge of which respondent has been found guilty. Respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein; but said application shall not be granted automatically.

ROBERT SCOTT CARSON (9999)

Respectfully submitted,

GERALD J. LUSTIG, M.D.

SIMON J. LIEBOWITZ

PATRICK J. PICARIELLO


Chairperson

Dated: October 12, 1989

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ROBERT SCOTT CARSON, M.D. : CHARGES

-----X

1. ROBERT SCOTT CARSON, M.D., the Respondent, was authorized to practice medicine in New York State on March 19, 1956 by the issuance of license number 077691 by the New York State Education Department.

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 from Fryer Research Center, 30 East 40th Street, Suite 608, New York, New York 10016.

3. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509 (McKinney 1985 and Supp. 1989) as set forth in the attached Specification.

SPECIFICATION

4. Respondent is charged with professional misconduct within the meaning of N.Y. Education Law §6509(5)(a)(ii) (McKinney 1985) by reason of his having been convicted of committing an act constituting a crime under federal law, in that:

On or about May 4, 1988 in the case of United States of America v. Robert S. Carson, M.D. et. al.

(D. Mass) Respondent was convicted, upon his plea of guilty to Counts 1 and 2 of a Superseding Indictment, of conspiracy to possess with intent to distribute and distribution of Schedule II narcotic controlled substances and of possession with intent to distribute and distribution of Schedule II narcotic controlled substances. More specifically, as detailed in the Superseding Indictment, Respondent, inter alia,


- issued orders, purporting to be prescriptions, for dilaudid, percodan, percocet and tylox tablets or capsules, all Schedule II narcotic controlled substances, during the approximate period of November, 1982 through December, 1985 to individuals J [redacted] L [redacted] J [redacted] L [redacted] and T [redacted] W [redacted] [co-defendants] for no legitimate medical purpose, outside the usual course of his professional practice and not in the usual course of professional treatment of said individuals.
- issued an order, purporting to be a prescription, during December, 1982, to

individual J [REDACTED] L [REDACTED] for tylox tablets without performing any diagnostic tests or reviewing any relevant medical history.

- issued, in December, 1982 and continuously thereafter until December, 1985, approximately 489 orders purporting to be prescriptions for approximately 38,245 dosage units of dilaudid, percodan, percocet and tylox to said three individuals.

Respondent was sentenced to a six month period of imprisonment on each of Counts 1 and 2, to be served concurrently, and a special parole term of three years with minimum supervision on Count 2.

DATED: Albany, New York
June 30, 1989



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

**ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK**

ROBERT SCOTT CARSON

CALENDAR NO. 9999



The University of the State of New York

IN THE MATTER

OF

ROBERT SCOTT CARSON
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 9999

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 9999, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (November 17, 1989): That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of ROBERT SCOTT CARSON, respondent, be accepted; that respondent is guilty of the charge by a preponderance of the evidence; that respondent's license and registration to practice as a physician in the State of New York be revoked upon the charge of which respondent has been found guilty; that respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein, but said application shall not be granted automatically; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of

ROBERT SCOTT CARSON (9999)

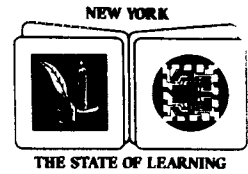
Regents, said vote and the provisions thereof are hereby adopted and SO ORDERED, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 29th day of November 1989.

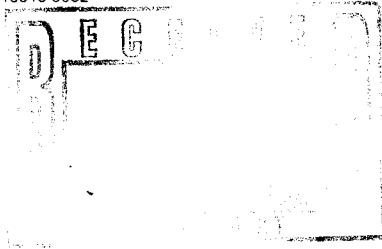
Thomas Sobol
Commissioner of Education

PUBLIC



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802



December 29, 1993

Robert S. Carson, Physician
3913 Pine Lamb Court
Tampa, Florida 33614

Re: Application for Restoration

Dear Dr. Carson:

Enclosed please find the Commissioner's Order regarding Case No. 93-154-60R which is in reference to Calendar No. 0013344. This order and any decision contained there in goes into effect five (5) days after the date of this letter.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

Gustave Martine
Supervisor

The University of the State of New York
Education Department



IN THE MATTER

of the

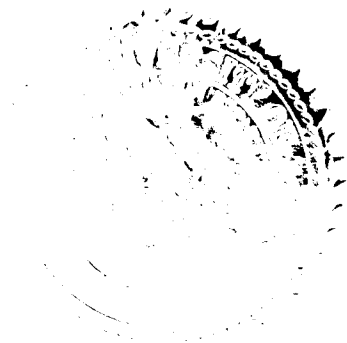
Application of ROBERT S. CARSON
for restoration of his license to practice
medicine in the State of New York

Case No. 93-154-60R

It appearing that the license of ROBERT S. CARSON, 3913 Pine Lamb Court, Tampa, Florida 33614, to practice medicine in the State of New York, was revoked by action of the Board of Regents on November 17, 1989, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on November 19, 1993, it is hereby

ORDERED that the petition for restoration of license No. 077691, authorizing ROBERT S. CARSON to practice medicine in the State of New York, is granted.

IN WITNESS WHEREOF, I, THOMAS SOBOL, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department at the City of Albany, this 17th day of December, 1993.



Thomas Sobol
Commissioner of Education

Case No. 93-154-60R

It appearing that the license of ROBERT S. CARSON, 3913 Pine Lamb Court, Tampa, Florida 33614, to practice medicine in the State of New York, having been revoked by action of the Board of Regents on November 17, 1989, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on November 19, 1993, it was

VOTED that the petition for restoration of license No. 077691, authorizing ROBERT S. CARSON to practice as a physician in the State of New York, be granted.

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Medical License

Re: **Robert S. Carson**

Attorney: Joseph Tandet

Robert S. Carson, 3913 Pine Limb Court, Tampa, Florida 33614, petitioned for restoration of his medical license. The chronology of events is as follows:

- 03/19/56 Licensed to practice medicine in New York State.
- 05/04/88 Convicted of the crimes of conspiracy to possess with intent to distribute and distribution of Schedule II Narcotic Controlled Substances and possession with intent to distribute and distribution of Schedule II Narcotic Controlled Substances. (See "Disciplinary History.")
- 10/12/89 Regents Review Committee ~~recommended~~ that license be revoked.
- 11/17/89 Board of Regents voted ~~revocation~~.
- 12/19/89 Commissioner's Order effective.
- 12/27/89 Temporary Restraining Order granted by Appellate Division of the Supreme Court.
- 03/08/90 Stay denied, Temporary Restraining Order vacated.
- 03/08/90 Revocation effective.
- 10/10/91 Petition for restoration submitted.
- 12/15/92 Peer Panel restoration review.
- 02/26/93 Recommendation of Peer Review Panel. (See "Recommendation of Peer Review Panel.")
- 09/21/93 Report and Recommendation of the Committee on the Professions. (See "Recommendation of the Committee on the Professions.")

Disciplinary History. (See attached Report of the Regents Review Committee.) On May 4, 1988, Dr. Carson was convicted, upon his plea of guilty to Counts 1 and 2 of a Superseding Indictment, of conspiracy to possess with intent to distribute and distribution of Schedule II narcotic controlled substances and possession with intent to distribute and distribution of Schedule II narcotic controlled substances.

During the approximate period from November, 1982 through December, 1985, Dr. Carson had issued orders, purporting to be prescriptions, for various Schedule II narcotic controlled substances. These orders were issued to three individuals for no legitimate medical purpose, outside the usual course of Dr. Carson's professional practice, and not in the usual course of professional treatment. In addition, in December, 1982, Dr. Carson had issued an order, purporting to be a prescription, to an individual for tylox tablets without performing any diagnostic tests or reviewing any relevant medical history. Also, from December, 1982 and continuously thereafter until December, 1985, Dr. Carson issued approximately 489 orders purporting to be prescriptions for approximately 38,245 dosage units of these same Schedule II narcotic controlled substances to the same three individuals.

On October 12, 1989, the Regents Review Committee (Lustig, Liebowitz, Picariello) found Dr. Carson guilty of the charge of professional misconduct by reason of his having been convicted of committing an act constituting a crime under Federal law, and recommended that his license be revoked. On November 17, 1989, the Board of Regents voted revocation. The Commissioner's Order became effective on December 19, 1989. On December 27, 1989, Dr. Carson instituted an Article 78 proceeding to contest the action of the Regents and obtained a Temporary Restraining Order. The Appellate Division of the Supreme Court denied Dr. Carson's request for a stay, the Temporary Restraining Order was vacated, and the revocation became effective on March 8, 1990. Because Dr. Carson withdrew his appeal, the Appellate Division never rendered a decision on the appeal itself.

Recommendation of Peer Review Panel. (See attached Report of the Peer Review Panel.) The Peer Review Panel (Lucariello, Santiago, Boyce) met on December 15, 1992. In its report, dated February 26, 1993, the Panel recommended that the petition for restoration be denied.

Recommendation of the Committee on the Professions. On September 21, 1993, the Committee on the Professions (Cantres, Sauer, Szetela) reviewed the petition of Robert S. Carson for the restoration of his license as a physician. Dr. Carson appeared personally, but was not represented by an attorney.

The Committee has reviewed the Peer Review Panel report and the record accompanying it, and has determined that the findings and conclusions of the Peer Review

Panel are unsupported and in contradiction to the record. Beyond disagreeing with the Peer Review Panel on the fitness of Dr. Carson to return to practice, the Committee expressed dismay over the tone and content of the report conveying the Peer Review Panel's determination. It consists largely of offensive conclusory statements, without rationale or factual support. Such a report is a disservice to the petitioner and those parties from the State Board for Medicine, the Education Department, and the Board of Regents who serve as stewards of the restoration process. It is the responsibility of the attorney who prepares the Peer Review Panel report to create an intelligible and reasoned determination section that can be defended on the record. It is the responsibility of the Peer Review Panel to read the report thoroughly. The panel chairperson should sign the report only if it can be defended in all respects. For the following reasons, this report is simply not adequate.

The Peer Review Panel concluded that Dr. Carson "has an impaired insight" and that "his cognition is impaired and he is not aware of what he knows and what he doesn't know". Such conclusions require some basis in objective fact -- such as an evaluation and report by a psychiatrist. The Peer Review Panel is without authority to conduct such an evaluation ad hoc during its interview of the petitioner. Moreover, the conclusions drawn by the Peer Review Panel are without support in the record. They are at absolute odds with the lucid and compelling presentation that Dr. Carson made to the Committee. The Peer Review Panel's report followed the initial conclusions with: "Applicant has poor judgment, is unrealistic, has no re-education, has no remorse, has a character flaw and is not thinking clearly." This collection of unsupported observations has no basis on the record and cannot qualify as a rationale for denying Dr. Carson the restoration of his license. The Committee has searched the record to find any possible objective **and scientific** justification for these denigrating remarks. Finding no such evidence in the record, the Committee must reject all such conclusions of the Peer Review Panel. Were it not for the fact that the record overwhelmingly demonstrates that Dr. Carson should indeed have his license restored to him, the Committee would remand this case for a proper review and analysis by a Peer Review Panel. However, the Committee has concluded that it would be inappropriate and unfair to delay Dr. Carson his just due any longer.

Dr. Carson opened his presentation to the Committee by stating that he was troubled and shocked by the report of the Peer Review Panel. Dr. Carson said that he did not know why the Peer Review Panel said what it did, and that he believed it was incorrect. Dr. Carson said that he was particularly troubled by the statements that he had no reeducation and had a cognitive difficulty. Dr. Carson submitted a written statement on his behalf, as well as a binder of supporting letters, a copy of a Scientific American article on cognitive studies, and a copy of a study relating to the conduct of cognitive studies. Dr. Carson pointed out that there are no facts to substantiate the Peer Review Panel report's conclusions. Dr. Carson said that he felt the investigator for his case had done a good job, but that the attorney advising the Peer Review Panel seemed to be against him and took his statements to the Peer Review Panel out of context.

Dr. Carson stated that he did not believe that his Alford plea (a plea which results

in a conviction, but expressly maintains innocence while acknowledging that a trier of fact might infer guilt from certain facts in evidence) in his federal court case should necessarily have led to the revocation of his license. The Committee noted that the sentencing judge in federal court also stated that, in his opinion, this was a case where it might not be appropriate for the physician to lose his license. Dr. Carson had been accused of issuing orders for excessive amounts of drugs for no medical purpose to a patient for purposes of financial gain. Dr. Carson said that the patient perjured herself on this count, and that it was clear that he had received no financial benefit. Dr. Carson said that he had been deceived by a husband and wife team into believing that the wife had advanced ovarian cancer. Dr. Carson acknowledged that he would ordinarily have been suspicious of anyone using as much medication as the wife was using, but that he was deceived by the husband/wife combination and the presence of their young daughter. Dr. Carson said that he thought of them as friends and that he is given to helping people. Dr. Carson said that he would now draw the line on drugs. Dr. Carson said that the Peer Review Panel did not discuss the sentencing judge's remarks with him. Dr. Carson added that he thought the favorable tenor of those remarks would have been an important factor in his favor had the Peer Review Panel given them attention.

Dr. Carson went on to explain that he was sorry that he had given the orders for the drugs and that it had not been the right thing to do. When Dr. Carson finally realized that he had been duped as to the wife's need for drugs, he failed to discontinue his relationship with the husband and wife due to his friendship with them. This admission is precisely the finding of the federal judge who sentenced Dr. Carson, but who still described Dr. Carson as, in part, a victim who gained in no way from his misconduct. Dr. Carson said that he believed that we all must go on living and that he had served his penance for his actions. Dr. Carson stated that he had been burned very badly by this episode, and that it has left him without money, and frustrated that he cannot help people. The Committee inquired as to what internal controls Dr. Carson had to ensure that his particular misconduct would not recur. Dr. Carson replied that he is a person who learns from his mistakes and knows that he will not make them again. Dr. Carson added that this was just one incident, and that he had handled many other chronic pain patients in an appropriate manner. The number and content of letters written on Dr. Carson's behalf by people whose lives were restored to them by his pain control care were a most powerful factor in his behalf. The Committee took particular note of clergymen whose lives and whose parishioners' lives had been touched by Dr. Carson.

Dr. Carson stated that he would like to treat chronically ill patients. Dr. Carson said that he had two offers -- one with chronic psychiatric patients, and the other with patients infected with the human immunodeficiency virus (HIV). Dr. Carson explained that the HIV related job would be more in the nature of research work. The Committee questioned Dr. Carson about his experience with acupuncture and asked if he believed that acupuncture could be used to treat acquired immune deficiency syndrome (AIDS). Dr. Carson said that he does not personally believe that acupuncture would necessarily help AIDS patients, but that he lacked sufficient information to form an informed opinion on this. Dr. Carson said

that he would not personally use acupuncture in this particular regard, but that he believed that qualified researchers should pursue the possibilities.

The Committee found that the record amply demonstrates reeducation efforts on the part of Dr. Carson. Dr. Carson's own submissions, as well as the reports of the Office of Professional Discipline investigator, unequivocally demonstrate significant reeducation efforts. Dr. Carson's statements to the Committee were consistent with his clear and thorough written submissions contained in the record. All of Dr. Carson's statements and materials reflect his remorsefulness and general rehabilitation. Accordingly, the Committee was satisfied that Dr. Carson meets the essential criteria for restoration of his medical license, and that Dr. Carson is highly unlikely to repeat the misconduct that led to the revocation of his license. With no basis for concluding that Dr. Carson poses any threat of harm to the public, the Committee concluded that Dr. Carson's license should be restored to him.

Based upon all the foregoing, the Committee unanimously found that Dr. Carson has demonstrated the remorse, rehabilitation, and reeducation essential to restoration of his license as a physician. Accordingly, the Committee unanimously recommended that Dr. Carson's petition for restoration of his license as a physician be granted.

Lizette A. Cantres, Chair

Richard J. Sauer

Daniel W. Szetela