



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

June 13, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dwayne Thwaites, M.D.

770 Claughton Island Drive

Redacted Address

Miami, Florida 33131

Robert Bogan, Esq.

NYS Department of Health

433 River Street - 4th Floor

Troy, New York 12180

RE: In the Matter of Dwayne Thwaites, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-95) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

**IN THE MATTER
OF
DWAYNE THWAITES, M.D.**

**DETERMINATION
AND
ORDER**

BPMC 08-95

A hearing was held on May 15, 2008, 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 April 15, 2008, were served upon the Respondent, DWAYNE THWAITES, M.D.

Pursuant to Section 230(10)(e) of the Public Health Law, Mary Patricia Meagher, R.N., Chairperson, Theodore A. Spevack, D.O., and Airlie Cameron, M.D., M.P.H., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. David A. Lenihan, Esq., Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by Thomas Conway, Esq., General Counsel, by Robert Bogan, Esq., of Counsel. The Respondent DWAYNE THWAITES, M.D., did not appear, although duly served with notice of process.

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)(c) and Section 6530(16) and 6530(42). 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. **Unless otherwise specified.**

1. **DWAYNE THWAITES, M.D.**, the Respondent, did not appear at the hearing although duly served with process.
2. **DWAYNE THWAITES, M.D.**, the Respondent, was authorized to practice medicine in New York State on June 24, 1999, by the issuance of license number 214513 by the New York State Education Department (Petitioner's Ex. 4).
3. On February 22, 1991, the Respondent entered into a student loan agreement with the Health Education Assistance Loan Program and signed a promissory note with a variable rate, agreeing to repay the sum of \$4,495.00. (Petitioner's Ex. 5).
4. The Respondent defaulted on this student loan and suit was brought in the Civil Court of the City of New York in February of 1998 under docket # Civil Kings 20623-1998. (Petitioner's Ex. 5).
5. The Respondent defaulted in the above action and a default judgment was entered by the clerk of the court on April 14, 2004 for damages of \$9,832.47 and, with interest and costs, a total judgment of \$11,350.50 was entered against the Respondent. (Petitioner's Ex. 5).
6. On June 29, 2007, the Department of Health and Human Services excluded the Respondent from participating in the Medicare program due to the above failure to repay his student loan to the Health Education Assistance Loan program. (Petitioner's Ex. 5).
7. On November 5, 2007, the Department of Health and Human Services stayed the Respondent's exclusion from participating in the Medicare program due to the above failure to repay his student loan

to the Health Education Assistance Loan program due to the Respondent's settlement agreement for repayment of this loan. (Petitioner's Ex. 5).

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing either in person or by counsel. The Administrative Law Judge ruled that Petitioner's Ex. 2 (an Affidavit of Non-Service for the Notice of Referral Proceeding and the Statement of Charges), Ex. 3 (a cover letter for the attempted Service for the Notice of Referral Proceeding and the Statement of Charges), Ex. 4 (documentation for the Respondent's last known address, demonstrated that the Petitioner had met the requirements of law regarding service of the Notice of Referral Proceeding and the Statement of Charges, and that, therefore, the hearing could proceed on the merits despite the absence of the Respondent.

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(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 also New York Education Law Section 6530(42) - "failing to comply with any agreement entered into to aid his medical education."

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(c) by having been found guilty in an adjudicatory proceeding by violating a state or federal statute or

regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct under the law of New York, in that Petitioner charges that Respondent had defaulted on repayment of a student loan, funded through the Health Education Assistance Loan Program of the United States Department of Health and Human Services

VOTE: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law Section 6530(16) by failing to comply with substantial provisions of federal, state, or local rules, or regulations governing the practice of medicine, in that Petitioner charges Respondent had defaulted on repayment of a student loan, funded through the Health Education Assistance Loan Program of the United States Department of Health and Human Services,

VOTE: Sustained (3-0)

THIRD SPECIFICATION

Respondent violated New York Education Law Section 6530(42) by failing to comply with any agreement entered into to aid his medical education , in that Petitioner charges Respondent had defaulted on repayment of a student loan, funded through the Health Education Assistance Loan Program of the United States Department of Health and Human Services.

VOTE: Sustained (3-0)

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded for having defaulted on a student loan obligation.
2. A fine of \$1,000.00 is imposed on the Respondent. The fine is payable in full within 30 days of the effective date of this Order. Payment must be submitted to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower, Room 1258, Albany, New York 12237. Failure to pay the fine on time will subject the Respondent to all provisions of law relating to debt collection by New York State, including imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits and licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).

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

DATED: Pittsford, New York
6/16/08, 2008

Redacted Signature
Mary Patricia Meagher, R.N.
Chairperson

Theodore A. Spevack, D.O.

Airlie Cameron, M.D., M.P.H.

To:

DWAYNE THWAITES, M.D.,
Respondent
770 Claughton Island Drive
Apartment # 908

Miami, FL 33131

Robert Bogan, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

APPENDIX I

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



IN THE MATTER
OF
DWAYNE THWAITES, M.D.
CO-07-08-4377-A

NOTICE
OF
HEARING

TO: DWAYNE THWAITES, M.D.

770 Cloughton Island Drive
Redacted Address
Miami, FL 33131

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on May 15, 2008, at 10:00 a.m., at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), 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. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of New York Public Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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. Pursuant to §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty 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 BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: April 15, 2008

Redacted Signature

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

Inquiries should be directed to:

Robert Bogan
Associate Counsel
Bureau of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180

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

IN THE MATTER
OF
DWAYNE THWAITES, M.D.
CO-07-08-4377-A

STATEMENT
OF
CHARGES

DWAYNE THWAITES, M.D., Respondent, was authorized to practice medicine in New York state on June 24, 1999, by the issuance of license number 214513 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 12, 2004, in the Civil Court of the City of New York, County of Kings, New York, Respondent was required to pay \$11,350.50 to the student loan Marketing Assessment for repayment of a student loan, funded through the Health Education Assistance Loan Program of the United States Department of Health and Human Services, on which he had defaulted.

B. On or about June 29, 2007, the United States of America, Office of Inspector General, Department of Health & Human Services, (hereafter "USA"), by letter, excluded Respondent from participation in Medicare, Medicaid, and all Federal health care programs, based on his failure to repay his Health Education Assistance Loan debt to enter into an agreement to repay the debt.

C. On or about November 5, 2007, the USA, by letter, reinstated Respondent's ability to participate in the programs set forth in Paragraph D, above, based on his entering into a Settlement Agreement for the repayment of his Health Education Assistance Loan, on which he had defaulted.

D. The conduct resulting in the USA action described in Paragraph A, above, would constitute misconduct under the laws of New York State, pursuant to the following section of New York State law:

1. New York Education Law §6530(16) (failure to comply with substantial provisions of federal, state, or local rules, or regulations governing the practice of medicine); and/or
2. New York Education Law §6530(42) (failing to comply with any agreement entered into to aid his medical education).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A, B, C, and/or D.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(16) by failing to comply with substantial provisions of federal, state, or local rules, or regulations governing the practice of medicine, in that Petitioner charges:

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

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(42) by failing to comply with any agreement entered into to aid his medical education if committed in New York state, in that Petitioner charges:

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

DATED: *April 15*, 2008
Albany, New York

Redacted Signature

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