

 **STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

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

Richard F. Daines, M.D.  
*Commissioner*

James W. Clyne, Jr.  
*Executive Deputy Commissioner*

February 1, 2010

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

John A. Carothers, M.D.

Redacted Address

Daniel Guenzburger, M.D.  
NYS Department of Health  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of John Andrew Carothers, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 10-16) 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), (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 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,

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

IN THE MATTER  
OF  
JOHN ANDREW CAROTHERS, M.D.

DETERMINATION  
AND  
ORDER

BPMC #10-16

**COPY**

A Notice of Hearing and a Statement of Charges, dated August 18, 2009, were served upon the Respondent, **John Andrew Carothers, M.D.** **WALTER M. FARKAS, M.D.** (Chair), **FERNANDO A. JARA, M.D.** and **MICHAEL N. J. COLON, ESQ.**, duly designated members of the State Board for Professional Medical Conduct ("**BPMC**"), served as the Hearing Committee (hereinafter "**Committee**") in this matter pursuant to §230(10) of the Public Health Law ("**P.H.L.**").

**JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE** served as the Administrative Officer.

The Department of Health ("**Department**") appeared by **DANIEL GUENZBURGER, ESQ.**, Associate Counsel.

**JOHN ANDREW CAROTHERS, M.D., ("Respondent")** appeared *pro se*.

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made and documents were admitted in evidence. References herein parenthesis are to the transcript "T." or to an exhibit "Ex. ". After consideration of the entire record, the Committee issues this Determination and Order in accordance with the Public Health Law and the Education Law of the State of New York.

### **PROCEDURAL HISTORY**

Date of Notice of Hearing:	August 18, 2009
Date of Statement of Charges:	August 18, 2009
Pre-Hearing Conference Held:	October 8, 2009
Date of Hearing:	November 20, 2009
Deliberations Held:	November 20, 2009

On September 16, 2009, the Respondent was informed by letter that a pre-hearing conference was scheduled for October 8, 2009, at 90 Church St., New York, New York. In that same notice the Respondent was also informed that he had to file an answer to the charges no later than 10 days prior to the start of the hearing, which was November 20, 2009, or the charges would be deemed admitted. The Respondent did not appear at the pre-hearing conference nor did he file an answer to the charges prior to 10 days before the start of the hearing. On October 19, 2009, the Respondent was informed by letter that the hearing was scheduled to start on November 20, 2009, and in that same letter was again informed of the requirement to file a timely answer and the

consequences if he failed to do so (ALJ Ex. 1). The Respondent did not file an answer to the charges.

On November 17, 2009, the Respondent faxed a request for adjournment of the November 20, 2009 hearing, to the ALJ (ALJ Ex. 1). The Department filed its opposition to the adjournment request via E-mail on November 18, 2009 (ALJ Ex. 2). The Respondent's adjournment request and the Department's position in opposition were conveyed to the Committee. Pursuant to Section 230(10)(f) of the Public Health Law, the request for an adjournment was denied by the Committee.

The Respondent appeared on November 20, 2009, the hearing day, *pro se*.

The ALJ ruled that Respondent had received ample notice and opportunity to submit an answer. The Notice of Hearing ( Ex. 1) at page 2 states:

Pursuant to the provisions of N.Y. Pub. 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 and allegation not so answered shall be deemed admitted. (Underline in original)

The Public Health Law to which Respondent was repeatedly referred by the ALJ, clearly indicates that the failure to file a written answer will result in the charges and allegations being deemed admitted. Respondent was informed of this by letters dated September 16, 2009 and October 19, 2009. Based on the Respondent's failure to submit a written answer, the ALJ ruled that the factual allegations and charges of misconduct contained in the Statement of Charges (Ex. 1) were deemed admitted by Respondent. ( T. 10, 34)

## **STATEMENT OF CASE**

The Statement of Charges alleged the Respondent violated one (1) category of professional misconduct, to wit being an habitual abuser of alcohol and having a psychiatric condition that impairs the ability to practice. A copy of the Statement of Charges is attached to this Determination and Order and made a part thereof as Appendix I.

## **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. These findings are based the application of Public Health Law §230 (10)(c) to the Statement of Charges.

1. Respondent was licensed to practice medicine in New York State on March 8, 1971 by the issuance of license number 108308 by the New York State Education Department ( Exs. 1 and 2).
2. On or about January 25, 2007, the Respondent was referred to the Committee for Physician Health (CPH) for possible assessment and treatment for alcohol dependence. He was referred to Marworth Treatment Center, an addiction assessment facility. The Respondent underwent an assessment at Marworth from January 29, 2007 until February 5, 2007 at which time he checked himself out AMA (against medical advice). The clinical assessors at Marworth concluded that the Respondent had abused alcohol from early adulthood, was alcohol dependent, had cognitive deficiencies and should not practice medicine until he completes a course of

residential treatment and is cleared for the practice of medicine. He was prohibited from practicing medicine by CPH (Exs. 3 and 4).

3. On or about January 14-16, 2009, Respondent underwent an assessment at Resurrection Health Care, a multidisciplinary assessment program. The assessment team at the Resurrection Health Care program concluded, among other things, that the Respondent is alcohol dependent, cognitively impaired and is not able to practice medicine with a sufficient degree of safety and skill (Ex. 6).

### **CONCLUSIONS OF LAW**

The Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions as to the allegations contained in the Statement of Charges were by a unanimous vote of the Committee.

The Committee concludes that all of the following Factual Allegations, in the August 18, 2009, Statement of Charges are **SUSTAINED**.

Based on the entire record, the Findings of Fact, and the Discussion that follows, the Committee unanimously concludes that the Specification of Charges of misconduct, specifically, Habitual Abuse of Alcohol and Psychiatric Impairment, contained in the Statement of Charges is **SUSTAINED**.

The rationale for the Committee's conclusions is set forth below.

## DISCUSSION

Respondent, by virtue of P.H.L. §230(10)(c), admitted the allegations and charges filed against him by the Department.

The Respondent admitted his guilt by virtue of failing to submit an answer as required by the Public Health Law and the Committee's sole responsibility became one of determining the appropriate penalty, if any, to assess.

With the above understanding, the Committee concludes by a unanimous vote that Respondent is guilty of professional misconduct under the laws of New York State, specifically, being an habitual abuser of alcohol and having a psychiatric condition which impairs his ability to practice medicine, in accordance with P.H.L. §230(10)(c) ( Exs. 1, 4 and 6).

## DETERMINATION AS TO PENALTY

Once the allegations and the charges were deemed admitted by the ALJ in accordance with the Public Health Law, the Committee's function became one of determining the appropriate penalty, if any, to be assessed against Respondent. The ALJ gave Respondent considerable latitude in presenting any possibly mitigating matters on his behalf. The Committee unanimously determines that Respondent's license to practice medicine in New York State should be **SUSPENDED** until he complies with the terms of the suspension as set forth in Appendix II and thereafter his license will be on **PROBATION** for a period of 5 (five) years in accordance with the terms specified in the above noted Appendix II, which is attached to this Order and made a part thereof.



This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service; and (10) probation.

The specification of misconduct of which the Respondent has been found guilty of lead the Committee to conclude that in fulfilling it's role to protect the citizens of the State of New York, the penalty of suspending the Respondent's license for an indefinite period of time and subsequently placing his license on probation would be appropriate.

The Committee found the evidence presented proved by a preponderance of that the Respondent is an habitual abuser of alcohol and suffers from a psychiatric condition which impairs his ability to practice medicine safely ( Exs. 4 and 6).

There are certain basic principles and fundamentals in the practice of medicine. Each licensed New York State physician must meet certain minimum standards. Each licensed New York State physician who undertakes the care and treatment of patients and holds himself out as a licensed physician in this State must provide safe treatment in compliance with minimally accepted standards of medical practice. Respondent's representation that he is a medical doctor, licensed and registered in New York State, obligates him to practice medicine within the appropriate medical standard of care which apply to all physicians. The Respondent's habitual use of alcohol and his mental impairment leads the Committee to conclude the Respondent cannot practice at this standard of care.

The Committee considered the statements made on the record by the Respondent and found them to be not exculpatory. Taking all of the facts, details, circumstances and particulars in this matter into consideration, the Committee determines the above noted penalty to be the appropriate sanction under the circumstances. The Committee concludes that the sanction imposed is the appropriate one to protect the public.

## ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct from the Statement of Charges ( Ex. 1) is **SUSTAINED**, and;
2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED**. The terms of the suspension are contained in Appendix II, attached hereto and made a part of this Determination and Order.
3. Subsequent to the Respondent's **SUSPENSION**, the Respondent is placed on **PROBATION FOR 5 (FIVE) YEARS**, the terms of which are contained in Appendix II, attached hereto and made a part of this Determination and Order. and
4. This Order shall be effective on personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

**DATED: Rockville Center, New York**

*January 25, 2010*

*Walter M. Farkas, MD*  
**WALTER M. FARKAS, M.D. (Chair)**

**FERNANDO A. JARA, M.D.**  
**MICHAEL N. J. COLON, ESQ..**

John A. Carothers, M.D.

Redacted Address

Daniel Guenzburger, Esq.  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
90 Church Street - Fourth Floor.  
New York, New York 10007

# **APPENDIX I**

IN THE MATTER  
OF  
JOHN ANDREW CAROTHERS, M.D.

STATEMENT  
OF  
CHARGES

JOHN ANDREW CAROTHERS, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 8, 1971 by the issuance of license number 108308 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, a radiologist, has habitually abused alcohol from early adulthood through the present.
- B. Respondent suffers from a cognitive impairment that impairs his ability to practice medicine.

SPECIFICATION OF CHARGES

SPECIFICATION

HABITUAL ABUSE OF ALCOHOL AND PSYCHIATRIC IMPAIRMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(8) by being a habitual abuser of alcohol and by having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

1. Paragraph A and/or Paragraph B

DATE: August 18, 2009  
New York, New York

*Roy Nemerson*

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Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

# **APPENDIX II**



### **Terms of Suspension**

1. The license to practice medicine of the Respondent, John Andrew Carothers, M.D., is **SUSPENDED** until he complies with the following:
  - a. With the approval and to the satisfaction of the Director of Office of Professional Medical Conduct (OPMC), Respondent shall enroll and successfully complete an inpatient residential treatment program for professionals with substance dependence and behavioral issues and be in compliance with all aftercare recommendations from such treatment program.
  - b. With the approval and to the satisfaction of the Director of OPMC, Respondent shall obtain a neurological and neuropsychological evaluation prior to enrolling in this treatment program, after a period of abstinence while in the program and post completion of the program noted above in paragraph A of these terms of suspension. Such evaluation shall include appropriate imaging studies to assess frontal and temporal lobe pullback, lacunar infarcts or dementias.
  - c. With the approval and to the satisfaction of the Director of OPMC, Respondent shall commence treatment with a neurologist for assessment to identify any treatment that may help to reverse his cognitive deficits and implement such plan of treatment and Respondent shall obtain neuropsychological testing results that indicate he has no cognitive deficits which rise to the level of impairment.

### **Terms of Probation**

1. Upon a written determination by the Director of OPMC that the Respondent has successfully fulfilled the terms of his suspension, the suspension is lifted and the Respondent's license is placed on **Probation for five (5) years**. Respondent shall conduct himself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Upon the Respondent's license suspension ending Respondent shall practice medicine only at a N.Y. Pub. Health Law Article 28 facility or equivalent thereof and only when monitored by a licensed physician ("sobriety monitor"), proposed by Respondent and subject to the written approval of the Director of OPMC.
  - a. Respondent shall remain alcohol free.
  - b. Respondent shall attend a minimum of three (3) Alcoholics Anonymous (AA) meetings per week.
  - c. Respondent shall notify all treating physicians of his history of alcohol dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
  - d. Respondent shall practice only when monitored by qualified health care professionals ("sobriety monitor") proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.
  - e. Respondent shall ensure that the monitor is familiar with Respondent's alcohol dependency and with the terms of this Order. Respondent shall cause the monitor to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitor to submit required reports on a timely basis.

f. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for an alcohol screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.

g. Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all alcohol monitoring tests to be performed at a frequency of no less than six (6) per month for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC and b) an assessment of self-help group (AA) attendance.

h. Respondent shall avoid all substances which may cause positive urines such as herbal tea, poppy seeds, mouthwash, cough medication. Any positive result will be considered a violation of this Order.

i. Respondent shall be solely responsible for any and all expenses associated with monitoring and complying with this Order, including fees, if any, to the monitoring physician.

8. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after he receives written notification from the Director of OPMC that the Suspension of his license is lifted.

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.