



STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

July 9, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ann Gayle, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

David Ralph Congdon, M.D.
231 Main Street
Rutland, Vermont 05701

David Ralph Congdon, M.D.
Baptist Memorial Hosp. Lauderdale
Physicians Building
Box 2F, Suite #2
326 Asbury Road
Ripley, Tennessee 38063-1698

Effective Date: 07/16/96

RE: In the Matter of David Ralph Congdon, M.D.

Dear Ms. Gayle and Dr. Congdon:

Enclosed please find the Determination and Order (No. 96-158) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Coming Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 all action 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.

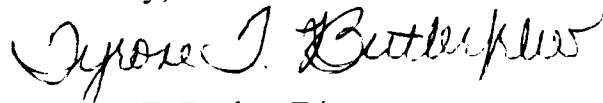
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw
Enclosure

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

**IN THE MATTER
OF
DAVID RALPH CONGDON, M.D.**

**DETERMINATION
AND
ORDER
BPMC - 96 - 158**

COPY

**MICHAEL R. GOLDING, M.D., (Chair), RAFAEL LOPEZ, M.D. and
DENNIS P. GARCIA** duly designated members of the State Board for Professional Medical
Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health
Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served
as the Administrative Officer.

The Department of Health appeared by **ANN GAYLE, ESQ.**, Associate Counsel.

Respondent, **DAVID RALPH CONGDON, M.D.**, did not appear personally and
was not represented by counsel.

A Hearing was held on May 21, 1996. Evidence was received and examined. A
transcript of the proceeding was made. After consideration of the record, the Hearing Committee
issues this Determination and Order, pursuant to the Public Health Law and the Education Law of
the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [**"P.H.L."**]).

This case, brought pursuant to P.H.L. § 230(10)(p), is also referred to as an "expedited hearing" The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

Respondent, DAVID RALPH CONGDON, M.D., is charged with professional misconduct within the meaning of § 6530(9)(a)(iii) and § 6530(9)(b) of the Education Law of the State of New York (**"Education Law"**).

Education Law § 6530(9)(a)(iii) defines professional misconduct in terms of being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within New York, would have constituted a crime under the laws of New York State (Petitioner's Exhibit # 1 and §6530[9][a][iii] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to § 6530(9)(a)(iii) of the Education Law, must determine: (1) whether Respondent has been convicted of a crime in another state and (2) whether Respondent's conduct or underlying act(s) would, if committed in New York State, constitute a crime under the laws of New York State.

¹ P.H.L. §230(10)(p), fifth sentence.

Respondent is also charged with professional misconduct within the meaning of §6530(9)(b) of the Education Law, to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and §6530[9][b] of the Education Law).

In order to find that Respondent committed professional misconduct, under §6530(9)(b) of the Education Law, the Hearing Committee must determine: (1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the findings were based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on December 31, 1974 by the issuance of license number 122699 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)².

2. Respondent is not currently registered with the New York State Education Department to practice medicine [T-9]³.

3. W. Barry Britton attempted to personally serve on Respondent; a Notice of Referral Proceeding; a Statement of Charges; and a package of Exhibits, on at least 3 separate occasions, in April and May 1996 (Petitioner's Exhibit # 1).

4. On May 2, 1996, Mina Ludvig mailed, by certified mail and regular mail, a copy of a Notice of Referral Proceeding and a Statement of Charges to Respondent (Petitioner's Exhibit # 1).

5. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (P.H.L. § 230[10][d]).

6. On November 5, 1991, Respondent was cited by the State of Vermont for operating a motor vehicle while under the influence of intoxicating liquor, in violation of 23 VSA § 1201 (a)(2). Respondent refused to give a breath sample (Petitioner's Exhibit # 3).

7. On December 27, 1991, Respondent pled guilty, in Rutland, Vermont District Court, to a violation of 23 VSA § 1201, a misdemeanor. Respondent was sentenced to a \$400 fine and a donation to the Rutland County diversion program was recommended in the amount of \$300 (Petitioner's Exhibit # 3).

² refers to exhibits in evidence submitted by the New York State Department of Health (Department's or Petitioner's Exhibit). Dr. Congdon did not submit any exhibits.

³ Numbers in brackets refer to transcript page numbers [T-].

15. The Tennessee Board of Medical Examiners of the State of Tennessee ("**Tennessee Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of Tennessee (Petitioner's Exhibits # 7 & # 8).

16. In February 1995, the Tennessee Board filed charges against Respondent for his prior conduct in Vermont and Missouri (Petitioner's Exhibit # 7).

17. On September 28, 1995, the Tennessee Board found that Respondent had violated Tennessee Medical Practice Act ("**TCA**") § 63-6-214(b)(20) in that he had been disciplined by another state for acts or omissions which would constitute grounds for discipline of a person licensed to practice medicine in the state of Tennessee. (Petitioner's Exhibit # 8).

18. On September 28, 1995, the Tennessee Board placed Respondent's license to practice medicine on probation for one year. Prior to the lifting of probation, the Tennessee Board required that Respondent: clear up the Vermont disciplinary action; and be assessed and evaluated for chemical dependence (Petitioner's Exhibit # 8).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual Allegations, from the April 16, 1996 Statement of Charges, are **SUSTAINED**.

The Hearing Committee further concludes, based on the above Factual Conclusion, that the three **SPECIFICATIONS OF CHARGES** in the Statement of Charges are **SUSTAINED**.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of a crime in the State of Vermont. Respondent's conduct in Vermont constitutes a crime under the laws of New York State. The Department of Health has met its burden of proof as to the first specification.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of improper professional practice and of professional misconduct by the States of Vermont, Missouri and Tennessee and his conduct in Vermont and Missouri would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof as to the second and third specifications.

I Professional Misconduct under §6530(9)(a)(iii) of the Education Law.

The Hearing Committee concludes that Respondent's acts or conduct, to wit, his arrest and misdemeanor conviction for DWI by the Vermont authorities, would, if committed in New York constitute at least a misdemeanor under Vehicle & Traffic Law § 1192.

Respondent's conviction and conduct constitutes professional misconduct under the laws of New York State.

II Professional Misconduct under § 6530(9)(b) of the Education Law.

The Vermont Board is a duly authorized professional disciplinary agency. In June 1994, the State of Vermont, through the Vermont Board instituted disciplinary action against Respondent.

The record establishes that Respondent committed professional misconduct pursuant to, at least, §§ 6530(2)⁴, 6530(9(a)(iii))⁵ and 6530(20)⁶ of the Education Law

In the September 20, 1994 Opinion and Order of the Vermont Board, the facts and conclusions establish that Respondent, was arrested and convicted of DWI; wilfully lied about that conviction both, to Vermont and Missouri; wilfully lied about his prior loss of hospital privileges; and wilfully lied about termination of his position at Castleton Medical Center. Based on those findings, the Vermont Board found Respondent guilty of violations of Vermont Statutes.

Taking the findings of the Vermont Board as true, the Hearing Committee finds that the record establishes that Respondent has committed fraud and can not be trusted to tell the truth. In addition to deceptively procuring medical licenses in the States of Vermont and Missouri, Respondent has an alcohol abuse problem, which concerns the Hearing Committee. Respondent did not respond to the charges filed against him by the Vermont Board. Similarly, Respondent did not respond to the charges filed against him here in New York.

The Hearing Committee is also concerned and disturbed by Respondent's lack of truthfulness in completing his license renewal applications. Respondent's behavior reveals a pattern of disregard for his professional responsibilities as a physician.

The Hearing Committee finds that Respondent's conduct, if committed in New York State, would constitute professional misconduct under, at least, §§ 6530(2); 6530(9)(a)(iii) and 6530(20) of the Education Law. Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(b) of the Education Law.

⁴ Each of the following is professional misconduct... Practicing the profession fraudulently ...

⁵ See discussion under Part I above.

⁶ Conduct in the practice of medicine which evidences moral unfitness to practice medicine; ...

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

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.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. Therefore the Committee is bound by the documentary evidence presented. Respondent's has not provided any mitigation to his conduct and intentional acts.

The record clearly establishes that Respondent committed significant violations of Vermont Laws. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct. Respondent needs to seek treatment for his alcohol abuse and needs to confront his past practices and actions. Respondent's behavior clearly demonstrates that he should not be allowed to continue to practice medicine.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented about the pattern of repeated deception and alcohol problem, it would have resulted in a unanimous vote for revocation of Respondent's license.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health, safety and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

On the basis of each of the violations of the Education Law, and not a combination of any or all of them, it is the unanimous determination of the Hearing Committee that Respondent's license to practice medicine be revoked.

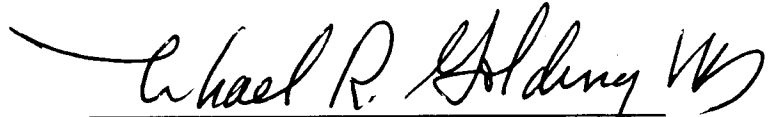
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: New York, New York
July 3, 1996



MICHAEL R. GOLDING, M.D., (Chair),

**RAFAEL LOPEZ, M.D.
DENNIS P. GARCIA**

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APPENDIX I

IN THE MATTER
OF
DAVID RALPH CONGDON, M.D.

STATEMENT
OF
CHARGES

David Ralph Congdon, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 31, 1974, by the issuance of license number 122699, by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 27, 1991, Respondent pled guilty, in Rutland, Vermont District Court, to driving while intoxicated, in violation of 23 V.S.A. §1201, a misdemeanor, and he was sentenced, *inter alia*, to a \$400 fine.
- B. On or about September 20, 1994, the State of Vermont Board of Medical Practice ("Vermont Board") found that Respondent had an alcohol abuse problem, that he had willfully, knowingly, and intentionally supplied false and deceptive information to the Vermont Board when he applied for license renewal, and that he had similarly willfully, knowingly, and intentionally supplied false and deceptive information to the Missouri Board of Registration for the Healing Arts when he applied for a medical license in that State. The aforesaid false and deceptive information which Respondent supplied to the Vermont and Missouri Boards included, but was not limited to, his answering "no" to questions regarding whether he had been a defendant in a criminal proceeding, when in fact he had, and whether hospital privileges had ever been suspended, when in fact they had. As a result of the aforesaid findings, which were violations of 26 V.S.A. §1354(1), (7) and (8), the Vermont Board

indefinitely suspended Respondent's license to practice medicine in the State of Vermont.

- C. On or about September 28, 1995, the State of Tennessee Department of Health, Board of Medical Examiners, ("Tennessee Board") found that Respondent had violated Tennessee Medical Practice Act ("T.C.A.") §63-6-214(b)(20) in that he had been disciplined by another state for acts or omissions which would constitute grounds for discipline of a person licensed to practice medicine in the state of Tennessee. To wit, the Vermont Board had found that Respondent had willfully, knowingly, and intentionally supplied false and deceptive information to the Vermont Board when he applied for license renewal, and that he had similarly willfully, knowingly, and intentionally supplied false and deceptive information to the Missouri Board of Registration for the Healing Arts when he applied for a medical license in that State, and that, as a result, the Vermont Board had indefinitely suspended Respondent's license to practice medicine in the State of Vermont. On or about September 28, 1995, the Tennessee Board placed Respondent's license to practice medicine on probation for one year.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii)(McKinney Supp. 1996) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Vehicle and Traffic Law §1192.2) as alleged in the facts of the following:

1. Paragraph A.

SECOND AND THIRD SPECIFICATIONS
HAVING BEEN FOUND GUILTY OF
PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1996) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§6530(2) and (20) as alleged in the facts of the following:

2. Paragraph B.
3. Paragraph C.

DATED: April 14, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct