



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

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

Karen Schimke  
*Executive Deputy Commissioner*

August 30, 1995

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael A. Hiser, Esq.  
NYS Department of Health  
Corning Tower-Room 2438  
Empire State Plaza  
Albany, New York 12237

Sidney Messer, M.D.  
13428 Mayella Avenue  
Box 232  
Marina Del Ray, California 90292

RECEIVED  
AUG 30 1995  
OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

**RE: In the Matter of Sidney Messer, M.D.**

Effective Date: 09/06/95

Dear Mr. Hiser and Dr. Messer:

Enclosed please find the Determination and Order (No. 95-197) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Corning 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,

*Tyrone T. Butler*

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

IN THE MATTER  
-OF-  
SIDNEY MESSER, M.D.

Respondent

DECISION  
AND  
ORDER  
OF THE  
HEARING  
COMMITTEE

BPMC ORDER NO. 95-197

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated June 30, 1995 which were served upon **SIDNEY MESSER, M.D.**, (hereinafter referred to as "Respondent"). **KENDRICK A. SEARS, M.D.**, Chairperson, **ALBERT L. BARTOLETTI, M.D.**, and **GEORGE F. COUPERTHWAIT, JR.**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on August 23, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct appeared by **MICHAEL A. HISER, ESQ.**, Associate Counsel, Bureau of Professional Medical Conduct. Respondent made no appearance whatsoever. Evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

### STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where 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 prior professional disciplinary action or criminal conviction. The scope of this 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9)(b) [having been found guilty of professional misconduct in another state] and Section 6530 (d) [having had disciplinary action taken in another state]. The charge arises from a revocation of Respondent's license to practice medicine in California. The underlying facts involve illegal-prescribing of dangerous drugs. The allegations in this proceeding and the underlying findings from California are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

### FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one through four of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

### CONCLUSIONS

Respondent had notice of this proceeding but chose not to appear. Respondent was found guilty of acts which would violate a multitude of standards in this state. Based upon the seriousness of the acts and Respondent's failure to provide any sort of mitigation, there is no choice but to revoke Respondent's license to practice medicine in this state.

**ORDER**

WHEREFORE, Based upon the forgoing facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges are **SUSTAINED**.

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

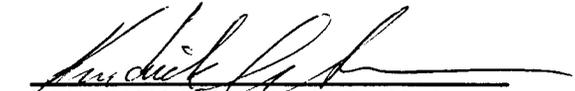
3. The license of Respondent to practice medicine in the State of New York is **REVOKED**;

Furthermore, it is hereby **ORDERED** that;.

4. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

**Dated:**  
**Syracuse, New York**

August 28 1995

  
**KENDRICK A. SEARS, M.D., Chairperson**

**ALBERT L. BARTOLETTI, M.D.**  
**GEORGE F. COUPERTHWAIT, JR.**



TO: **MICHAEL A. HISER, ESQ.**  
Associate Counsel  
Bureau of Professional Medical Conduct  
New York State Department of Health  
Corning Tower Building  
Empire State Plaza  
Albany, N.Y. 12237

**SIDNEY MESSER, M.D.**  
13428 Mayella Ave.  
Box 232  
Marina Del Ray, California 90292

**APPENDIX ONE**

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

-----x

IN THE MATTER : NOTICE OF  
OF : REFERRAL  
SIDNEY MESSER, M.D. : PROCEEDING

-----x

TO: SIDNEY MESSER, M.D.  
13428 Mayella Avenue  
Box 232  
Marina Del Ray, California 90292

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of August, 1995 at 10:00 o'clock in the forenoon of that day at Hearing Room E, Concourse Level, Cultural Education Building, Empire State Plaza, Albany, New York 12237.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly 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 jurisdictions, evidence may be offered which would show that the 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.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 11, 1995.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before August 11, 1995 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. 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 proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in

writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
*June 30*, 1995

*Peter D. Van Buren*

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

Inquiries should be addressed to:

MICHAEL A. HISER  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2429  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
SIDNEY MESSER, M.D. : CHARGES

-----X

SIDNEY MESSER, M.D., the Respondent, was authorized to practice medicine in New York State on June 27, 1935 by the issuance of license number 30907 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 28, 1992, the Division of Medical Quality, Medical Board of California, State of California ("Medical Board of California") issued an accusation in Case No. D-4969 against the Respondent. The accusation alleged that Respondent provided medical care to a patient "E.R." from on or about August 1986 through on or about September 1991. The accusation further alleged that Respondent engaged in unprofessional conduct by repeated acts of clearly excessive prescribing or administering of drugs or treatment in a manner inconsistent with the standard of the community; that Respondent engaged in unprofessional conduct by prescribing, dispensing or furnishing dangerous drugs without a good faith prior examination and medical indication therefore; that Respondent engaged in unprofessional conduct by the commission of gross negligence;

that Respondent engaged in unprofessional conduct by the commission of repeated negligent acts; and that Respondent engaged in unprofessional conduct by displaying incompetence. Based on the preceding, Respondent was alleged to have violated California Business and Professions Code §725 and §2234(a), 2234 and 2242(a), 2234(b), 2234(c), and 2234(e).

B. On or about August 31, 1993, the Administrative Law Judge issued a proposed decision in Case No. D-4969. By the proposed decision, cause was found to revoke Respondent's medical license under each of the California Business and Professions Sections cited above. On or about November 4, 1993, the Medical Board of California adopted the proposed decision of the Administrative Law Judge. The decision revoking Respondent's Physicians and Surgeon's Certificate in California became effective December 4, 1993.

C. The conduct resulting in the disciplinary action taken by the Medical Board of California involving the license of the Respondent would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically New York Education Law §6530(3) (McKinney Supp. 1995) (practicing the profession with negligence on more than one occasion); and/or New York Education Law §6530(4) (McKinney Supp. 1995) (practicing the profession with gross negligence on a particular occasion); and/or New York Education Law §6530(5) (McKinney Supp. 1995) (practicing the profession with incompetence on more than one occasion); and/or New York

Education Law §6530(6) (McKinney Supp. 1995) (practicing the profession with gross incompetence.

SPECIFICATION OF MISCONDUCT

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with having been found guilty of improper professional practice or professional misconduct by a duly authorized 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, within the meaning of New York Education Law §6530(9)(b), in that Petitioner charges:

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

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with having disciplinary action taken against him by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action involving Respondent's license would, if committed in New York State, constitute professional misconduct under the laws of

New York State, within the meaning of New York Education Law §6530(9)(d), in that Petitioner charges:

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

DATED: *June 30*, 1995  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct