



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

July 16, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Judd Gary Goodman, M.D.
42 Hawthorne Avenue
Glen Ridge, New Jersey 07028

Thurm & Heller, LLP
Kevin D. Porter, Esq. of Counsel
261 Madison Avenue
New York, New York 10016

Paul Stein, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

RE: In the Matter of Judd Gary Goodman, M.D.

Dear Dr. Goodman, Mr. Porter and Mr. Stein:

Enclosed please find the Determination and Order (No. 96-164) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

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

**IN THE MATTER
OF
JUDD GARY GOODMAN, M.D.**

**DETERMINATION
AND
ORDER
BPMC - 96 - 164**

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 **PAUL STEIN, ESQ.**, Associate Counsel.

Respondent, **JUDD GARY GOODMAN, M.D.**, appeared personally and was represented by **THURM & HELLER, LLP, KEVIN D. PORTER, ESQ.** of counsel.

A Hearing was held on May 21, 1996. Evidence was received and examined, including witnesses who were sworn or affirmed. 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, JUDD GARY GOODMAN, M.D., is charged with professional misconduct within the meaning of § 6530(9)(b) of the Education Law of the State of New York (**"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 § 6530(9)(b) misconduct, 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.

¹ P.H.L. §230(10)(p), fifth sentence.

Respondent is also charged with professional misconduct within the meaning of § 6530(9)(d) of the Education Law, to wit: professional misconduct by reason of having disciplinary action taken or having voluntarily or otherwise surrendered his license after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, for conduct, which conduct, would, if committed in New York State constitute professional misconduct under the Laws of New York State. (Petitioner's Exhibit # 1 and § 6530[9][d] of the Education Law).

In order to find that Respondent committed § 6530(9)(d) misconduct, the Hearing Committee must determine: (1) whether Respondent had some disciplinary action taken or instituted against him by a duly authorized professional disciplinary agency of another state; OR (2) whether Respondent surrendered his license after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state: AND (3) whether Respondent's conduct, on which the disciplinary action or surrender was taken 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 1, 1978 by the issuance of license number 136897 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)².

2 Respondent is currently registered with the New York State Education Department to practice medicine (Petitioner's Exhibit # 2)

3 Judd Gary Goodman, M.D graduated from the Baylor College of Medicine, Houston, Texas. Dr. Goodman currently works at Eastern Women's Center, in New York City, with a specialty in Obstetrics and Gynecology ("OB-GYN") medicine. He became Board Certified in OB-GYN in 1986 and recertified in 1996. Dr. Goodman testified as to the New Jersey events and their subsequent influence on his professional career (Respondent's Exhibit # A); [T-19-37]³.

4 On April 29, 1996, David Q. Moore served on Respondent a copy of a Notice of Referral Proceeding; a Statement of Charges; and a Summary of Hearing Rules (Petitioner's Exhibit # 2). Respondent has acknowledged receipt [T-6].

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

6 The State Board of Medical Examiners of the State of New Jersey ("**New Jersey Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of New Jersey (Petitioner's Exhibits # 3 & # 4).

7 In November 1993, the New Jersey Board filed a complaint charging Respondent with gross and/or repeated negligence and professional misconduct in the care and treatment provided to 9 patients (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) or by Dr. Goodman (Respondent's Exhibit). An ALJ Exhibit was accepted in evidence for background review and general information.

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

8 The November 1993 complaint alleged that on April 6, 1991, Respondent performed 26 termination of pregnancy procedures at the Union City Women's Center located in Union City, New Jersey ("Center"). Respondent allegedly left the Center while two of his patients were still recovering from the effects of anesthesia, leaving only one licensed health care provider (a Certified Nurse Anesthetist) on the premises. Both patients still required trained monitoring. None of the office staff on duty were trained in cardiopulmonary resuscitation. One patient recovered and left the clinic ambulatory but the other patient died on April 11, 1991 (Petitioner's Exhibit # 3); [T-22-23, 27-28]

9 As of April 6, 1991, Respondent had no hospital privileges (voluntarily); concentrated his medical practice solely on terminations of pregnancy; and worked at three separate facilities [T-34-35].

10. On October 18, 1994, the New Jersey Board issued a Consent Order ("**Consent Order**") which granted Respondent "leave to surrender his New Jersey license to practice medicine and surgery with prejudice" (Petitioner's Exhibit # 4).

11. The Consent Order also granted Respondent the right to resubmit his licensure application for the New Jersey Board's consideration at any time subsequent to a period of at least five (5) years from the date of the Order (Petitioner's Exhibit # 4).

12. In the Consent Order, the New Jersey Board found that Respondent's conduct constituted a violation of New Jersey Statutes (N.J.S.A. § 45:1-21) (Petitioner's Exhibit # 4); (ALJ's Exhibit # 1).

13. Respondent signed and agreed to be bound by the Consent Order (Petitioner's Exhibit # 4).

14. The Hearing Committee accepts the Consent Order and adopts same as part of its own Findings of Fact (Petitioner's Exhibit # 4).

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 22, 1996 Statement of Charges, are SUSTAINED.

The Hearing Committee further concludes, based on the above Factual Conclusion, that the FIRST and SECOND SPECIFICATION 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 improper professional practice and of professional misconduct by the State of New Jersey and his conduct in New Jersey would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

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

The New Jersey Board is a duly authorized professional disciplinary agency. In November 1993, the State of New Jersey, through the New Jersey Board instituted disciplinary action against Respondent.

The October 18, 1994 Consent Order, contains facts and conclusions which establish that Respondent's conduct constituted grounds for revocation of his New Jersey medical license. The Consent Order, which was agreed to by Respondent, is equivalent to a finding, by the New Jersey Board, of guilt of violations of New Jersey Statutes.

The record establishes that Respondent committed professional misconduct pursuant to, at least, § 6530(3)⁴ and § 6530(4)⁵ of the Education Law

Negligence is failure to exercise the care that would be exercised by a reasonably prudent licensee (physician) under the circumstances.

Gross Negligence is the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by conduct that is egregious or conspicuously bad. Gross Negligence may consist of a single act of negligence of egregious proportions. Gross Negligence may also consist of multiple acts of negligence that cumulatively amount to egregious conduct. Gross Negligence does not require a showing that a physician was conscious of impeding dangerous consequences of his conduct⁶.

Taking the findings of the New Jersey Board as true, the Hearing Committee finds that the record establishes that Respondent is guilty of negligence and gross negligence.

The Hearing Committee finds that Respondent's conduct, if committed in New York State, would constitute professional misconduct under, at least, § 6530(3) and (4) 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 with negligence on more than one occasion;

⁵ Each of the following is professional misconduct... Practicing the profession with gross negligence on a particular occasion;

⁶ These definitions were obtained from a memorandum, prepared by Henry M. Greenberg, General Counsel for the New York State Department of Health, dated January 9, 1996, and entitled: Definitions of Professional Misconduct under the New York Education Law.

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

As discussed above, Respondent had disciplinary action instituted against him by the New Jersey State Board. New Jersey's actions resulted in Respondent surrendering his medical license to New Jersey. The Hearing Committee finds and determines that Respondent's conduct on which the disciplinary action was taken would, if committed in New York State, constitute professional misconduct under, at least, § 6530(3) and (4) of the Education Laws of New York State (See discussion under Part I above).

Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(d) of the Education Law.

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.

The record clearly establishes that Respondent committed significant misconduct in New Jersey. The fact that Respondent has surrendered his license in New Jersey and has consented to being barred from reapplication for at least five years was significant to the Hearing Committee. The best and most appropriate place for Respondent to have presented mitigation was in New Jersey.

Respondent was involved in a volume termination of pregnancy practice at the Union City Women's Center. After performing 26 terminations of pregnancy, Respondent "rushed" to another facility for more. Respondent left two patients at the facility who had not yet been discharged, under the care of a certified nurse-anesthetist and no other licensed personnel. One of the patients died.

In determining an appropriate measure of discipline to impose, the Hearing Committee has considered the mitigating factors offered by Respondent including the strides he has made in changing his pattern of practice, the praiseworthy statements from his supervisor and co-workers, and his co-operation with New Jersey authorities. With regard to the issue of sanctions, however, it is a generally accepted principal that the State where respondent lived and practiced medicine at the time of the offense has the greatest interest in the issue and the public policy considerations relevant to such disciplinary actions. Thus, greater weight has been accorded in this referral proceeding as to the sanctions issued by the State of New Jersey.

Accordingly, respondent license to practice medicine in the State of New York should be revoked. This is consistent with what was imposed, and consented to by Respondent, in the State of New Jersey.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented about the events of gross negligence and repeated negligence of his patients, the Hearing Committee would have voted unanimous for revocation of Respondent's license

The Hearing Committee considers Respondent's misconduct to be serious. With a concern for the health 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 totality of the circumstances presented.

All other issues raised have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

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 12, 1996


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

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APPENDIX I

IN THE MATTER
OF
JUDD GARY GOODMAN, M.D.

STATEMENT
OF
CHARGES

JUDD GARY GOODMAN, M.D., the Respondent, was authorized to practice medicine in New York State on December 1, 1978 by the issuance of license number 136897 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. 1. On or about October 18, 1994, the New Jersey State Board of Medical Examiners (hereinafter referred to as "the Board"), issued a Consent Order ("the Consent Order"), after an investigation disclosed facts that warranted the filing of a Complaint by the New Jersey Attorney General on or about November 11, 1993. The Consent Order, inter alia, stated that:

On April 6, 1991, Respondent Goodman had performed 26 termination of pregnancy procedures at the Union City Women's Center located at 1115 Summit Avenue in Union City, New Jersey. He left the premises while two of his patients were still recovering from the effects of anesthesia, leaving only one licensed health care provider (a non-physician) on the premises. At that time, both patients still required trained monitoring. None of the office staff on duty that day were trained in cardiopulmonary resuscitation. Only one licensed nurse, the Certified Nurse Anesthetist referred to above, was present. One patient recovered fully and left the clinic ambulatory but the other patient died several days later. The aforesaid conduct constitutes a violation of N.J.S.A. 45:1-21. Consent Order pp. 1-2.

2. The Consent Order, inter alia, granted Respondent "leave to surrender his New Jersey license to practice medicine and surgery with prejudice, except that respondent may resubmit his licensure application for the Board's consideration at any time subsequent to a period of at least five (5) years from date of this Order" (Consent Order p. 2), and Respondent did, in fact, surrender his New Jersey license.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

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:

- a. Practicing the profession with gross negligence on a particular occasion (N.Y. Educ. Law sec. 6530 (4) (McKinney Supp. 1996)); and/or
- b. Practicing the profession with negligence on more than one occasion (N.Y. Educ. Law sec. 6530 (3) (McKinney Supp. 1996)).

as Petitioner specifically alleges:

1. The facts in Paragraph A1 and A2.

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN BY A DULY AUTHORIZED
PROFESSIONAL DISCIPLINARY AGENCY OF ANOTHER STATE

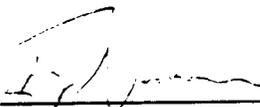
Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law sec. 6530(9)(d) (McKinney Supp. 1996), in that he voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely:

- a. Practicing the profession with gross negligence on a particular occasion (N.Y. Educ. Law sec. 6530 (4) (McKinney Supp. 1996)); and/or
- b. Practicing the profession with negligence on more than one occasion (N.Y. Educ. Law sec. 6530 (3) (McKinney Supp. 1996)).

as Petitioner specifically alleges:

1. The facts in Paragraph A1 and A2.

Dated: New York, New York
April 22, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct