



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

January 13, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

E. Marta Sachey, Esq.
New York State Department of Health
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237

Stanford W. Ascherman, M.D.
120 Montgomery Street
Suite 1790
San Francisco, California 94104

RE: In the Matter of Stanford W. Ascherman, M.D.

Dear Ms. Sachey and Dr. Ascherman:

Enclosed please find the Determination and Order (No. BPMC-97-20) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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), 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 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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

COPY

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

IN THE MATTER
OF
STANFORD W. ASCHERMAN, M.D.

DETERMINATION

AND

ORDER

BPMC -97-20

A Notice of Hearing and Statement of Charges, both dated August 29, 1996, were served upon the Respondent, **STANFORD W. ASCHERMAN, M.D. DENISE M. BOLAN, R.P.A.**, (Chair), **PHYLLIS LEPPERT, Ph.D, M.D.** and **AARON B. STEVENS, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on October 30, 1996. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **E. MARTA SACHEY, ESQ**, Associate Counsel of Counsel. The Respondent did not appear and was not represented by counsel. Evidence was received and witnesses sworn and heard 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 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 a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication

regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9) (d) . A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Respondent was authorized to practice medicine in New York State on December 4, 1951 by the issuance of license number 071895 by the New York State Education Department. (Pet. Ex. #3)
2. The California Medical Board, pursuant to its Order dated May 10, 1996 and a Stipulation and Waiver dated April 5, 1996 entered into with Respondent, issued a public letter of reprimand to Respondent, required Respondent to pay \$4,500 in investigation and enforcement costs and required Respondent to apply for a retired status license instead of applying to renew his license in full active status when it expired in August 1996.

3. The conduct underlying the California Board's imposition of disciplinary action upon Respondent consisted of the failure to disclose to a surgical patient unavailability to provide postoperative care and the failure to make clear arrangements between the surgeon and his successor regarding the scope and duration of the successor's assumed responsibility for a patient postoperatively which constitutes gross negligence in violation of California Business and Professions Code §2234(b).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was disciplined by the California Medical Board for his failure to adequately attend a patient postoperatively. Education Law Section 6530 (9) (d) defines professional misconduct as having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, 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, would if committed in New York state, constitute professional misconduct under the laws of New York state. As a result, the Hearing Committee voted to sustain the Specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined, that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee notes that Respondent did not appear at the hearing and that there is nothing to consider in mitigation of the penalty. The Hearing Committee notes that the medical records indicate that the patient in question died from "septic peritonitis, in turn caused by leakage at a point along the line of surgical closure of the stomach, apparently due to an incomplete or ineffective closure." (Pet. Ex. 4, Accusation, page 5, paragraph 10) The Hearing Committee finds that the ineffective closure and Respondent's failure to inadequately attend the patient postoperatively constitute gross negligence. The Hearing Committee believes that a physician who has acted with such gross negligence cannot be allowed to practice in New York state. Therefore, under the circumstances, revocation is the appropriate sanction in this instance.

ORDER

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

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

Dated: New York, New York

December 19, 1996

Denise M. Bolan, R.P.A.-C
DENISE M. BOLAN, R.P.A. (Chair)

PHYLLIS LEPPERT, Ph.D, M.D.
AARON B. STEVENS, M.D.

TO: E. Marta Sachey, Esq.
Associate Attorney
NYS Department of Health
Corning Tower - 25th Floor
Empire State Plaza
Albany, New York 12237

Stanford W. Ascherman, M.D.
120 Montgomery Street
Suite 1790
San Francisco, California 94104

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APPENDIX I

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

**PETITIONER'S
EXHIBIT**
encl

1-2-96

-----X
IN THE MATTER : NOTICE OF
OF : REFERRAL
STANFORD W. ASCHERMAN, M.D. : PROCEEDING
-----X

TO: STANFORD W. ASCHERMAN, M.D.
120 Montgomery Street
Suite 1790
San Francisco, California 94104

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. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 30th day of October, 1996 at 10:00 in the forenoon of that day at the Legislative Office Building, 7th Floor, Room 711A, Empire State Plaza, Albany, New York 12248.

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 October 16, 1996.

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 October 16, 1996 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
August 29, 1996



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

Inquiries should be addressed to:

E. MARTA SACHEY
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
STANFORD W. ASCHERMAN, M.D. : CHARGES

-----X

STANFORD W. ASCHERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on December 4, 1951 by the issuance of license number 071895 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in New York State.

FACTUAL ALLEGATIONS

1. The California Medical Board, pursuant to its Order dated May 10, 1996 and a Stipulation and Waiver dated April 5, 1996 entered into with Respondent, issued a public letter of reprimand to Respondent, required Respondent to pay \$4,500 in investigation and enforcement costs and required Respondent to apply for a retired status license instead of applying to renew his license in full active status when it expired in August 1996.
2. The conduct underlying the California Board's imposition of disciplinary action upon Respondent

consisted of the failure to disclose to a surgical patient unavailability to provide postoperative care and the failure to make clear arrangements between the surgeon and his successor regarding the scope and duration of the successor's assumed responsibility for a patient postoperatively which constitutes gross negligence in violation of California Business and Professions Code §2234(b).

3. The conduct underlying the California Board's imposition of disciplinary action upon Respondent would, if committed in New York State, constitute professional misconduct under N.Y. Education Law §6530(4) [gross negligence on a particular occasion] and/or 6530(3) [negligence on more than one occasion] (McKinney Supp. 1996).

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) by reason of having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having 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 or refusal, revocation or the surrender of the license

would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges the facts in Paragraphs 1 through 3.

DATED: *August 29*, 1996
Albany, New York


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