



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Public

Dennis P. Whalen
Executive Deputy Commissioner

September 27, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alben G. Goldstein, M.D.
611 S. Carlin Springs Road
Suite 202
Arlington, VA 22204

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Hedley Park Place
433 River Street
1st Floor Annex
Troy, New York 12180

RE: In the Matter of Alben G. Goldstein, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-226) 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.

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 Respondent or the Department may seek a review of a committee determination.

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 "Sean D. O'Brien/nm". The signature is written in a cursive style with a large, looped "S" and "O".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:nm

Enclosure

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

COPY

IN THE MATTER
OF
ALBEN G. GOLDSTEIN, M.D.

DETERMINATION

AND

ORDER

BPMC No. 06-226

A hearing was held on September 20, 2006, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated May 25, 2006, were served upon the Respondent, **Alben G. Goldstein, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D.**, Chairperson, **Prakash C. Saharia, M.D.**, and **Mr. Irving S. Caplan**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and represented himself.

Evidence was received and transcripts of these proceedings were made.

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

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Alben G. Goldstein, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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. All Hearing Committee findings were unanimous.

1. Alben G. Goldstein, M.D., the Respondent, was authorized to practice medicine in New York State on April 4, 1994, by the issuance of license number 195302 by the New York State Education Department (Petitioner's Ex. 5).

2. On September 19, 2005, the Virginia Board of Medicine ("Virginia Board"), by an Order ("Virginia Order"), placed the Respondent on indefinite probation and required him to complete 30 hours of continuing medical education in the areas of record keeping,

professional boundaries and addiction medicine, based on conducting his medical practice in a manner that endangered the health and welfare of his patients and on performing acts that were likely to deceive, defraud or harm the public (Petitioner's Ex. 6).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(5) - "Practicing the profession with incompetence on more than one occasion;"
- New York Education Law Section 6530(17) - "Exercising undue influence on the patient, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the licensee or of a third party;" and
- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of eighteen years;"

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) 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..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine placed on probation or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the probation or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

In the Virginia Order, the Virginia Board found fault with several aspects of the treatment provided to four of the Respondent's patients. Regarding Patient A, the Virginia Board found:

a. During his prescribing of opioid pain medication for Patient A, he failed to have her enter into a chronic pain management contract, to perform regular examinations, testing or review related to the course of the treatment, and to monitor Patient A's compliance with medication as prescribed. On multiple occasions he provided a prescription for opioids prior to the projected date for a refill with little or no attention to patterns of abuse. Further, he failed to create a comprehensive treatment plan to manage Patient A's pain and relied solely upon escalating doses of opioids.

b. Dr. Goldstein failed to detect and treat Patient A's weight loss, from 106 pounds on October 26, 2000, to 70 pounds on December 1, 2000.

The hearing record does not provide any basis for a finding that under New York State law, it is professional misconduct to have a chronic pain management contract. However, the rest of the Virginia Board's findings regarding Patient A do fall within the definition of professional misconduct. Specifically, the treatment of Patient A constitutes

acts of negligence and incompetence. The Virginia Board also made similar findings regarding the Respondent's treatment of Patients B, C and G.

The Virginia Order found that the Respondent exercised undue influence over Patients A and C by requesting and receiving gifts from them. The Virginia order also held that the Respondent's medical records were inadequate for Patients A, B, C, D and G.

At the beginning of this hearing, the Respondent sought to make an issue of whether the Hearing Committee had the requisite training and experience to determine whether his pain management procedures constituted professional misconduct. The Administrative Law Judge ruled that the Hearing Committee was appointed in conformance to the requirements of law and that this issue would not be addressed in this hearing.

The Respondent argued that this hearing should not be held and no action should be taken against him because he no longer had a license to practice medicine in New York State. He testified that he has never practiced medicine in New York State and that the license he obtained many years ago cannot still be in effect. This contention is incorrect. Pursuant to Education Law Section 6502(1), a physician's license is "valid during the life of the holder" unless "the licensee is stricken from the roster of such licensees by the board of regents on the order of the state board for professional medical conduct..."

The Respondent's testimony on the quality of his medical care for these patients, on the sufficiency of his medical records, and on the undue influence findings was characterized by the Respondent as arguments in mitigation. However, much of this testimony was a denial of the accuracy of the findings in the Virginia Order. Pursuant to Public Health Law Section 230(10)(p), this Hearing Committee is required to accept the

findings of the Virginia Board as accurate. Any effort to prove that the Virginia Board's findings were inaccurate must be rejected automatically.

The Respondent testified that the treatment provided to these patients was provided in good faith to relieve their pain. This may be true, but it cannot outweigh the fact that the medical care that he provided was deficient in many ways. There also cannot be any explanation for how a physician acting in good faith would request gifts from his patients, particularly expensive gifts such as those involved in this case.

The Petitioner recommended that the Respondent's license to practice medicine be revoked. The Hearing Committee believes that this is not necessary to protect the residents of New York State. The residents of New York State should be adequately protected by the period of probation and continuing medical education that is taking place in Virginia combined with the continuing medical education and additional period of probation described in the Order, below, should the Respondent ever return to New York State to practice medicine.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent shall successfully complete ten hours of continuing medical education on the subject of medical ethics. The courses to be taken shall be chosen by the Respondent and submitted in writing for approval to the Petitioner's Office of Professional Medical Conduct ("OPMC") (NYS Department of Health, Office of Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180-2299). Only courses approved in writing by OPMC shall satisfy this requirement of the Order. The Respondent must submit written documentation of successful completion of this continuing education requirement to OPMC within eighteen months of the effective date of this Order.

2. The Respondent is placed on probation for six months. The probation is stayed until the Respondent returns to the active practice of medicine in New York State. The terms of probation are stated in paragraphs 3 through 14 of this Order.

3. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

4. The Respondent shall submit to OPMC written notification of any change in 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 30 days of each action.

5. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order and shall personally meet with a person designated by OPMC when so requested.

6. The period of probation shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. After the period of active probation begins, the Respondent shall notify OPMC, in writing, if the Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of 30 consecutive days or more. The Respondent shall notify OPMC 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 the Respondent's return to practice in New York State.

7. The Respondent's professional performance may be reviewed by OPMC. This review may include, but shall not be limited to, a review of office records, patient

records and hospital charts, interviews with or periodic visits with the Respondent and his staff at practice locations or OPMC offices.

8. The Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State regulations regarding controlled substances.

9. During the period of probation, the Respondent shall practice medicine only when monitored by a practice monitor, who must be a licensed physician, board certified in an appropriate specialty, proposed by the Respondent and subject to the written approval of OPMC. An approved practice monitor must be in place prior to the Respondent's resumption of the active practice of medicine in New York State.

10. The Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The monitor shall visit the Respondent's medical practice at each and every location, on a random, unannounced basis at least monthly and shall examine at least twenty records maintained by the Respondent, including patient records, prescribing information and office records. The purpose of this review is to determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

11. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees to the monitoring physician.

12. The Respondent shall cause the practice monitor to report quarterly, in writing, to OPMC.

13. The Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2,000,000.00 per occurrence and \$6,000,000.00 per policy year, in

accordance with Public Health Law Section 230(18)(b). Proof of coverage shall be submitted to OPMC prior to the Respondent's resumption of the active practice of medicine in New York State.

14. Upon receipt of evidence of noncompliance with the terms of probation, OPMC or the State Board for Professional Medical Conduct may initiate a violation of probation proceeding and/or any other proceeding against the Respondent as may be authorized by law.

15. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York

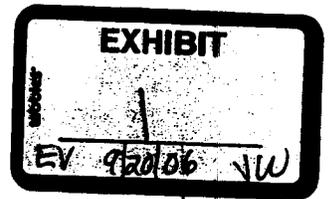
Sept. 26, 2006



Lyon M. Greenberg, M.D.
Chairperson

Prakash C. Saharia, M.D.
Irving S. Caplan

SECRET



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

ORIGINAL

IN THE MATTER
OF
ALBEN G. GOLDSTEIN, M.D.
CO-05-12-6363-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ALBEN G. GOLDSTEIN, M.D. albgazer@yahoo.com
611 S. Carlin Springs Rd.
Suite 202
Arlington, VA 22204

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20th day of July 2006, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 10, 2006.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 10, 2006, 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

May 25, 2006



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

**ALBEN G. GOLDSTEIN, M.D.
CO-05-12-6363-A**

STATEMENT

OF

CHARGES

ALBEN G. GOLDSTEIN, M.D., Respondent, was authorized to practice medicine in New York state on April 4, 1994, by the issuance of license number 195302 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 19, 2005, the Commonwealth of Virginia, Board of Medicine (hereinafter "Virginia Board"), by an Order (hereinafter "Virginia Order"), placed Respondent's license to practice medicine on INDEFINITE PROBATION and required him to complete thirty (30) hours of CME in the areas of record-keeping, professional boundaries, and addiction medicine, based on conducting his practice in such a manner as to be a danger to the health and welfare of his patients or the public and performing any act likely to deceive, defraud or harm the public.

B. The conduct resulting in the Virginia Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
 2. New York Education Law §6530(5) (incompetence on more than one occasion);
 3. New York Education Law §6530(17) (exercising undue influence on a patient);
- and/or
4. New York Education Law §6530(32) (failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York State Education Law §6530(9)(b) 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 New York state, in that Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having his license to practice medicine placed on probation or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the probation or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

DATED: *May 25*, 2006
Albany, New York


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