



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

May 21, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Cindy M. Fascia, Esq.
Associate Counsel
NYS Dept. of Health
Corning Tower-Room 2438
Albany, New York 12237

Stephen G. Silberstein, M.D.
719 Second Street
Davis, California 95616

Effective Date: 05/28/96

RE: In the Matter of Stephen G. Silberstein, M.D.

Dear Ms. Fascia and Dr. Silberstein:

Enclosed please find the Determination and Order (No. 96-124) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

bcc: Dr. Vacanti
Ms. Riser
~~Ms. Bohenek~~
Ms. Saile
Mr. Osten
Mr. Horan
Mr. Kelleher (w/AOS)
SAPA File
Case File
Reading File

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.

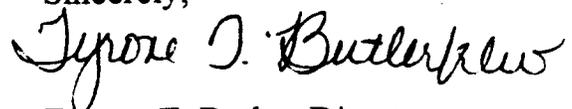
The notice of review served on the Administrative Review Board should be forwarded to:

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:rlw
Enclosure

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

COPY

IN THE MATTER
-OF-
STEPHEN GERALD SILBERSTEIN, M.D.
Respondent

DETERMINATION

AND

ORDER

BPMC-96-124

A Notice of Referral Proceeding and Statement of Charges, both dated February 16, 1996, were served upon the Respondent, Stephen Gerald Silberstein, M.D. **WILLIAM P. DILLON, M.D. (Chair), JOSEPH G. CHANATRY, M.D. and D. MARISA FINN** 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. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Cindy M. Fascia, Esq., Associate Counsel. The Respondent was not represented by counsel nor did he appear in person. Evidence was received, statements were 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). This statute provides for an expedited proceeding 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 proceeding 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 § 6530(9)(d) (disciplinary action taken against the license by another state). The charges herein arise from Respondent entering into a Stipulation with the State of California based on an Accusation. The charges consist of the Respondent prescribing Droperidol (Inapsine) for a psychiatric patient, instructing her on the dosage and authorizing her to self-administer the drug via injection. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix One.

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 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. Stephen Gerald Silberstein, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on July 16, 1963, by the issuance of license

number 090764 by the New York State Education Department. (Pet. Ex. #4).

2. On or about March 21, 1995, the Medical Board of California adopted the Stipulation executed by the Respondent and the State of California. (Pet. Ex. #3)

3. The Respondent was charged by the Medical Board of California with committing acts which constituted repeated negligence and gross negligence. The conduct involved the Respondent watching a psychiatric patient who had suicidal tendencies, self-mutilate herself and doing nothing to stop her on two occasions during therapy sessions and prescribing Droperidol (Inapsine) IV to this same patient, and then instructing and authorizing her to self-inject this drug. (Pet. Ex. #3)

4. The Medical Board of California revoked Respondent's Physician's and Surgeon's Certificate, stayed the revocation and placed the Respondent on three (3) years probation. (Pet. Ex. # 3)

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 concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent had disciplinary action taken or had his application for a license refused by a professional disciplinary agency of another state. The underlying conduct which was the basis for the action by California would constitute professional misconduct in New

York. Specifically, the Hearing Committee found the Respondent's actions would fall within the definitions of misconduct set forth at §§ 6530(3) (Practicing the profession with negligence on more than one occasion) and 6530(4) (Practicing the profession with gross negligence on a particular occasion).

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 of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

It is clear that Respondent has breached his fiduciary duty with respect to his treatment of the patient in question. The Committee finds that Respondent, while purportedly rendering medical care, abdicated his responsibility to protect his patient and engaged in conduct which violates a paramount duty related to the practice of the profession.

The Committee found the Respondent engaged in conduct which evidences he is unfit to practice medicine. The facts show the Respondent violated his professional trust and the ethical and professional standards of the medical community to which he belongs.

The Hearing Committee unanimously determined that the Respondent should not be afforded the privilege of practicing medicine in New York and that revocation is the only appropriate sanction under the circumstances.

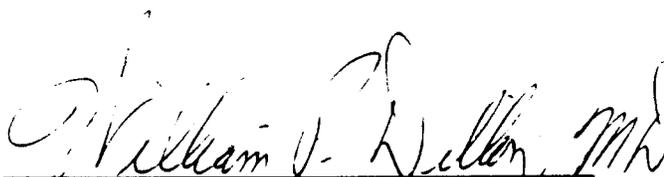
ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State is hereby **REVOKED**.

DATED: Buffalo, New York

May 18th, 1996



WILLIAM P. DILLON, M.D. (CHAIR)
Joseph G. Chanatry, M.D.
D. Marisa Finn

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

Stephen G. Silberstein, M.D.
719 Second Street
Davis, California 95616

APPENDIX ONE

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

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IN THE MATTER : STATEMENT
OF : OF
STEPHEN GERALD SILBERSTEIN, M.D. : CHARGES

-----X

STEPHEN GERALD SILBERSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on July 16, 1963 by the issuance of license number 090764 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 Medical Board of California Division of Medical Quality, by Decision and Order effective April 20, 1995 pursuant to a Stipulation entered into with Respondent, inter alia:

- Revoked Respondent's Physician's and Surgeon's Certificate and stayed the revocation;
- Placed Respondent on three years probation;
- Required that Respondent undergo a psychiatric evaluation and, if required by the Board, psychiatric treatment;
- Required Respondent to successfully complete a course in Ethics and, during each year of probation, to undertake not less than forty hours of education in addition to the Continuing Medical

Education requirements for relicensure;

- Required Respondent to pay to the Board its cost of investigation in the amount of \$2,000.00.

2. The conduct underlying the California Board's imposition of disciplinary action upon Respondent consisted of gross negligence in violation of Calif. Business and Professions Code §2234(a). More specifically, it concerned the treatment of a psychiatric patient in November 1985 and September 1986 by prescribing a multiple dose vial of Droperidol (Inapsine) IV 10cc on an outpatient basis, by instructing the patient on the dosage and by authorizing the patient to give herself the injections.
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. Educ. Law §6530(4) [practicing with gross negligence on a particular occasion] and/or §6530(3) [practicing with 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 suspension of an application for a license 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: *February 16,* 1996
Albany, New York

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