



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

OFFICE OF PUBLIC HEALTH
Lloyd F. Novick, M.D., M.P.H.
Director
Diana Jones Ritter
Executive Deputy Director

July 27, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

George Byron Deguire, M.D.
165 Willoughby Street
Brooklyn, New York 11201

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

W. Russell Corker, Esq.
Shayne, Dachs, Stanisci, Corker & Sauer
250 Old Country Road
Mineola, New York

RE: In the Matter of George Byron Deguire, M.D.

Dear Dr. Deguire, Mr. Corker and Mr. Smith :

Enclosed please find the Determination and Order (No. 94-127) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he 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:mmn

Enclosure

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

-----X
IN THE MATTER :

DETERMINATION

OF :

AND

GEORGE BYRON DeGUIRE, M.D. :

ORDER
-----X

NO. BPMC-94-127

Stephen A. Gettinger, M.D. Chairman, Jean Pakter, M.D. and Victor B. Marrow duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Sections 230 (1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12) of the Public Health Law. Jane B. Levin, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	March 9, 1994
Statement of Charges dated:	March 9, 1994
Hearing date:	May 16, 1994
Deliberation date:	June 22, 1994
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, N.Y.
Petitioner appeared by:	Peter J. Millock, Esq. General Counsel

NYS Department of Health
By: David Smith, Esq.
Associate Counsel

Respondent appeared by:

Shayne Dachs Stanisci Corker
& Sauer
250 Old Country Road
Mineola, N.Y.
By: W. Russell Corker, Esq.

WITNESSES

For the Petitioner:

- 1) Lynn Borgatta, M.D.

For the Respondent:

- 1) George Byron DeGuire, M.D. (Respondent)

STATEMENT OF CHARGES

The Statement of Charges essentially charges the Respondent with professional misconduct by reason of practicing the profession of medicine with gross negligence on a particular occasion; with failure to comply with state law governing the practice of medicine, and with failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers of 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.

GENERAL FINDINGS

1. George Byron DeGuire, M.D. the Respondent, was authorized to practice medicine in New York State by the issuance of license number 079579 by the New York State Education Department in 1957. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 (Pet.'s Ex. 6).

2. Respondent is the sole owner of, establishes the policy for, and sets the standards of the Multi-Purpose Women's Center, Inc. ("Center") (T. 77, 97-99).

FINDINGS OF FACT AS TO PATIENT A

3. On July 17, 1993, Patient A, who was 14 years old, and who was accompanied by her mother, appeared at the Center for an abortion (T. 61-61, 79-81; Pet. Ex. 2).

4. She was seen by the medical assistant, who filled out part of the clinic record and gave it to Respondent at the time he saw the patient (T. 79; Pet. Ex. 2).

5. Respondent admitted that Patient A could not give him an accurate date for her last menstrual period (T. 81; Pet. Ex. 2, p.3).

6. Respondent did not perform an abdominal exam prior to initiating the procedure (T. 83-84).

7. When Respondent attempted to examine the patient, she was uncooperative, and he was unable to adequately perform a pelvic examination (T. 68).

8. An adequate examination would have revealed the gestational age of the fetus (T. 23, 55).

9. The patient's blood pressure was not taken or recorded during the procedure nor was a blood type determined (T. 17-18, 31; Pet. Ex. 2, p.3).

10. A hematocrit was not performed, despite the fact that Patient A was at high risk of being anemic (T. 21, 34, 51-52; Pet. Ex. 2).

11. A urinalysis was not performed (T. 21; Pet. Ex. 2).

12. The patient was given general anesthesia (T.37). The anesthetic agent was never identified in the medical record (T. 36; Pet. Ex. 2).

13. The Respondent then began dilating the patient's cervix. When he introduced the vacuette, he immediately noticed an unexpected return of amniotic fluid. Realizing that he was dealing with a more advanced pregnancy than he had anticipated, he

discontinued further intervention (T. 70).

14. Once the patient recovered from anesthesia, the Respondent put her in his own automobile and together with one of his assistants, drove the patient and her mother to Flushing Hospital (T. 73).

15. A sonogram was performed at the hospital, which disclosed a fetus consistent with 27 weeks of gestation (Pet. Ex. 3, p. 56). The patient was admitted to the hospital in stable condition for observation (T. 75). In the early morning hours she went into labor and gave birth to a stillborn (T. 75; Pet. Ex. 3, p.6).

16. The attempted termination of pregnancy as performed on Patient A was a substantial deviation from acceptable medical practice. An adequate physical examination was not performed and the proper gestational age of the fetus was never ascertained (T. 30-31).

17. Respondent failed to record the date of Patient A's last menstrual period, hematocrit, blood type, blood pressure, urinalysis results or medications administered, including the anesthetic agent used (Pet. Ex. 2).

18. Respondent's testimony that he performed a complete physical examination on Patient A was not credible (T. 67), since the Respondent's office record reveals normal findings for the abdominal, pelvic and uterine examinations (Pet. Ex. 2).

CONCLUSIONS AS TO PATIENT A

19. The Respondent failed to perform an adequate physical

examination on Patient A prior to commencing the termination of pregnancy procedure.

20. An adequate examination would have revealed the gestational age of the fetus.

21. If the Respondent had correctly determined the gestational age of the fetus he would not have attempted to perform the termination of pregnancy.

22. The gestational age of the fetus as determined at the hospital, was approximately 27 weeks. Respondent, as a consequence of gross negligence, therefore violated section 125.40 of the New York Penal Law which prohibits the performance of a termination of pregnancy on a fetus of 24 weeks of age or more.

23. The Respondent failed to maintain a record for Patient A which accurately reflects the evaluation and treatment of the patient.

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VOTE OF THE HEARING COMMITTEE

(All votes were unanimous.)

FIRST SPECIFICATION:

(Gross negligence on a particular occasion)

SUSTAINED as to Paragraphs A and A1-5.

SECOND SPECIFICATION:

(Failure to comply with state law)

SUSTAINED as to Paragraphs A and A1-5.

THIRD SPECIFICATION:
(Failure to maintain record)

SUSTAINED as to Paragraphs A and A1-3.

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

The Hearing Committee unanimously determines that Respondent's license to practice medicine should be suspended for a period of three (3) months.

The Committee feels that the Respondent's gross negligence in failing to properly evaluate Patient A was not mitigated by the lack of patient cooperation. Rather than proceeding with the termination on the day of Patient A's visit to his office, the Respondent should have pursued other options, such as obtaining a sonogram or admitting the patient to the hospital for an examination under anesthesia, which would have correctly established the gestational age of the fetus.

Additionally, the Respondent's checking off as "normal" on his office record his examinations of the patient's abdomen, uterus, and pelvis casts doubts in the Committee's mind as to whether any exam was performed at all, despite the testimony.

The Committee recognizes that the Respondent took appropriate action once he recognized his error. However this does not mitigate his egregious conduct in failing to perform an examination adequate to determine the gestational age of the fetus before commencing the termination of pregnancy.

Because there were no allegations that the Respondent does not know how to perform first trimester terminations, the Committee did

not feel it appropriate to require the Respondent to undergo retraining.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT

1. Respondent's license to practice medicine in the State of New York is suspended for three (3) months.

Dated: New York, New York

July 21, 1994



STEPHEN A. GETTINGER, M.D.

Chairperson

JEAN PAKTER, M.D.

VICTOR B. MARROW

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

-----X
: IN THE MATTER :
: OF : NOTICE
: GEORGE BYRON DEGUIRE, M.D. : OF
: : HEARING
-----X

TO: GEORGE BYRON DEGUIRE, M.D.
165 Willoughby Street
Brooklyn, New York 11201

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 16th day of May, 1994, at 10:00 in the forenoon of that day at 5 Penn Plaza, Sixth Floor, New York, New York 10001 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce

witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO THE OTHER SANCTIONS SET OUT IN
NEW YORK PUBLIC HEALTH LAW SECTION 230-a
(McKinney Supp. 1994). YOU ARE URGED TO
OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: New York, New York

March 9, 1994



CHRIS STERN HYMAN,
Counsel

Inquiries should be directed to: DAVID W. SMITH
Assistant Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
Telephone No.: 212-613-2617

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

-----X

IN THE MATTER : STATEMENT
OF : OF
GEORGE BYRON DeGUIRE, M.D. : CHARGES

-----X

GEORGE BYRON DeGUIRE, M.D., the Respondent, was authorized to practice medicine in New York State in 1957 by the issuance of license number 079579 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994.

FACTUAL ALLEGATIONS

- A. On or about July 17, 1993, Respondent commenced a termination of pregnancy on Patient A at his medical office located at 165 Willoughby Street, Brooklyn, New York. (Patient A is identified in the Appendix attached hereto.)
1. Respondent failed to perform an adequate physical examination of Patient A or note such examination, if any.

2. Respondent failed to keep an adequate record of his evaluation and treatment of Patient A.
3. Respondent failed to perform or cause to be performed a sonogram on Patient A or to note such sonogram, if any.
4. Respondent incorrectly diagnosed the gestational age of the baby to be 10 weeks when in fact the gestational age was approximately 26 weeks or more.
5. Respondent inappropriately commenced a termination of pregnancy procedure on Patient A which did not meet minimum acceptable medical standards and was in violation of the New York State Penal Law, Section 125.40.

SPECIFICATIONS

FIRST SPECIFICATION

GROSS NEGLIGENCE ON A PARTICULAR OCCASION

Respondent is charged with practicing the profession with gross negligence on a particular occasion within the meaning of N.Y. Educ. Law Section 6530(4) (McKinney Supp. 1994). Specifically, Petitioner charges:

1. The facts in Paragraphs A and A1-5.

SECOND SPECIFICATION

FAILURE TO COMPLY WITH STATE LAW

Respondent is charged with a willful or grossly negligent failure to comply with state law governing the practice of medicine, specifically N.Y.S. Penal Law Section 125.40, within the meaning of N.Y. State Educ. Law Section 6530(16) (McKinney Supp. 1994), Petitioner charges:

2. The facts in Paragraph A and A1-5.

THIRD SPECIFICATION

FAILURE TO KEEP RECORDS

Respondent is charged with failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient within the meaning of N.Y. Educ. Law Section 6530(32) (McKinney Supp. 1994). Specifically, Petitioner charges:

3. The facts in Paragraphs A and A1-3.

DATED: New York, New York

March 9, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct