



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

December 13, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jean Bresler, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Marshall Mandell, M.D.
6721 Oakmont Way
Bradenton, Florida 34202

RECEIVED
DEC 15 1994
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of Marshall Mandell, M.D.

Dear Ms. Bresler and Dr. Mandell:

Enclosed please find the Determination and Order (No. 94-263) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

**IN THE MATTER
OF
MARSHALL MANDELL , M.D.**

DETERMINATION

AND

ORDER

BPMC-94-263

A Notice of Hearing and Statement of Charges both dated August 2, 1994, were served upon the Respondent, MARSHALL MANDELL, M.D. RUFUS A. NICHOLS, M.D., (Chair), BENJAMIN WAINFELD, M.D., and RANDOLPH MANNING, 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. CHRISTINE C. TRASKOS, ESQ., Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 22, 1994. The Department of Health appeared by JEAN BRESLER Esq., Associate Counsel. The Respondent did not personally 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) (a) (i). 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 January 3, 1957 by the issuance of license number 078266 by the New York State Education Department. (Pet. Ex. 3)

2. On or about July 21, 1992, the State of Connecticut, Department of Health Services, Medical Examining Board, took disciplinary action against Respondent for violating Connecticut General statutes Section 20-13c which provides in pertinent part that the Board is authorized to:

" . . . restrict, suspend or revoke the license or limit the right to practice of a physician in accordance with 19a-17, when the Board finds that such physician is unable to practice medicine with reasonable skill or safety for any of the following reasons. . . (4) illegal, incompetent or negligent conduct in the practice of medicine. . ." (Pet. Ex. 2)

3. The Connecticut Board found that the Respondent had informed patients that allergies are the underlying cause of multiple sclerosis, conducted allergy testing without scientific justification, conducted potentially dangerous allergy testing without a licensed physician present, failed to inform patients of the experimental nature of his testing and treatment, failed to perform appropriate physical examinations, failed to adequately review prior medical records and failed to keep adequate medical records for three patients who sought treatment for symptoms related to multiple sclerosis. Additionally, the Connecticut Board found that the Respondent advised a patient that allergies are the underlying cause of chronic Epstein-Barr Virus. In addition, for this patient, Respondent performed allergy testing without scientific justification, failed to inform her of the experimental nature of his testing and treatment, failed to perform appropriate physical examinations, failed to adequately review her medical history and performed provocative allergy testing without a physician present. (Pet .Ex.3)

4. As a result, the Connecticut Board placed Respondent on probation for three years which included among other requirements that he make certain disclosures to his patients, that he be monitored, that he refrain from making certain assertions to his patients and that he insure that a licensed physician remain at his office premises while allergy testing is being performed on patients. (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 unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was disciplined by the State of Connecticut for practicing medicine with incompetence and negligence on several

occasions. Section 6530 (9) (b) of the Education Law defines professional misconduct as "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." 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 suspended for three years following the effective date of this Determination and Order. The suspension shall be stayed in full and Respondent placed on Probation. The complete terms of probation are attached to this Determination and Order in Appendix II. 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.

At the Hearing, Adrienne Buffaloe, M.D., an attending physician at Cornell New York Hospital, appeared and made a statement on behalf of Respondent. (T. 3) Dr. Buffaloe stated that Dr. Mandell was in Florida suffering from the flu and that he was unable to attend. (T. 4,19) Dr. Buffaloe testified that Respondent successfully treated her sixteen years ago for multifoood and chemical sensitivities. (T. 11, 16) She has referred numerous patients to Respondent over the years and she has never received any complaints about him. (T. 14)

Dr. Buffaloe further testified that Respondent has been in full compliance with all terms of his Connecticut probation and that he has retired from his full time medical practice. (T.15) She added however, that Respondent intends to serve as an adjunct faculty member in one of the medical schools in New York and that he would be seeing patients occasionally. (T. 15)

The Hearing Committee believes that if Respondent is planning to practice in the State of New York, the public is entitled to certain safeguards against future acts of medical misconduct. These safeguards include the monitoring of Respondent's records by a board certified immunologist and requiring that all patients under his care be tested in the presence of Respondent or another licensed physician and not delegated to support staff. The Hearing Committee believes that under the totality of the circumstances, a three year stayed suspension with probation which includes the above enumerated conditions is the appropriate sanction in this instance.

ORDER

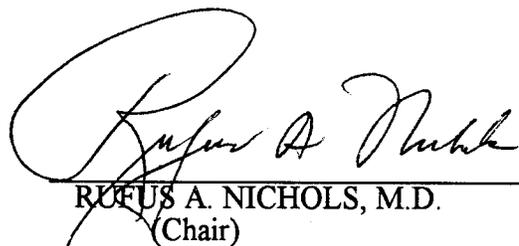
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** for a period of three years from the effective date of this Determination and Order. The suspension shall be stayed and Respondent shall be placed on probation in accordance with the terms of probation contained in Appendix II which is attached to this Determination and Order and incorporated herein.

Dated: Albany, New York

December 8, 1994



RUFUS A. NICHOLS, M.D.

(Chair)

BENJAMIN WAINFELD, M.D.

RANDOLPH MANNING

TO: Jean Bresler, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza - 6th Floor
New York, NY 10001

Marshall Mandell, M.D.
6721 Oakmont Way
Bradenton, Florida 34202

APPENDIX II
TERMS OF PROBATION

1. Dr. Mandell 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 imposed by law and by his profession.
2. Dr. Mandell shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Mandell shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Dr. Mandell leaves New York to reside or practice outside the State, Dr. Mandell shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.
5. Dr. Mandell's probation shall be supervised by the Office of Professional Medical Conduct.
6. For the first year of probation, Dr. Mandell shall have bi-monthly, and for the remaining two years, quarterly meetings with a monitoring physician who shall review his practice. The monitoring physician shall be a board certified immunologist who has been in practice as such for at least five years, selected by Dr. Mandell and subject to the approval of the Office of Professional Medical Conduct. This monitoring physician shall review randomly selected medical records and evaluate whether Dr. Mandell's medical care compares with generally accepted standards of medical practice. Dr. Mandell shall not practice medicine in New York State until an acceptable monitoring physician is approved by the Office of Professional Medical Conduct.
7. All patients under Respondent's care shall be tested in the presence of Respondent or another licensed physician.

8. Dr. Mandell shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.
9. Dr. Mandell shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Mandell elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.
10. If there is full compliance with every term set forth herein, Dr. Mandell may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Mandell pursuant to New York Public Health Law Section 230(19) or any other applicable laws.

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: MARSHALL MANDELL, M.D. : PROCEEDING
: :
-----X

TO: MARSHALL MANDELL, M.D.
6721 Oakmont Way
Bradenton, Fl. 34202

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 8th day of September, 1994 at 10:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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 August 30, 1994.

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 &DDATE, 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 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: New York, New York

August 2, 1994



Chris Stern Hyman
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Jean Bresler
Associate Counsel
212-613-2615

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

-----X
IN THE MATTER : STATEMENT
OF : OF
MARSHALL MANDELL, M.D. : CHARGES
-----X

MARSHALL MANDELL, M.D., the Respondent, was authorized to practice medicine in New York State on January 3, 1957 by the issuance of license number 078266 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FIRST SPECIFICATION

A. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530 (9) (b) (McKinney Supp. 1994) in that he has been found guilty of improper professional practice 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 in that:

On or about July 21, 1992, the State of Connecticut, Department of Health Services, Medical Examining Board,

found the Respondent guilty of violating Connecticut General statutes Section 20-13c which provides in pertinent part that the Board is authorized to:

....restrict, suspend or revoke the license or limit the right to practice of a physician in accordance with Section 19a-17, when the Board finds that such physician is unable to practice medicine with reasonable skill or safety for any of the following reasons...(4) illegal, incompetent or negligent conduct in the practice of medicine...."

At the conclusion of an administrative hearing the Connecticut Board found that the Respondent had informed patients that allergies are the underlying cause of multiple sclerosis, conducted allergy testing without scientific justification, conducted potentially dangerous allergy testing without a licensed physician present, failed to inform patients of the experimental nature of his testing and treatment, failed to perform appropriate physical examinations, failed to adequately review prior medical records and failed to keep adequate medical records for three patients who sought treatment for symptoms related to multiple sclerosis. Additionally, the Connecticut Board found that the Respondent advised a patient that allergies

ar the underlying cause of chronic Epstein-Barr Virus. In addition, for this patient, Respondent performed allergy testing without scientific justification, failed to inform her of the experimental nature of his testing and treatment, failed to perform appropriate physical examinations, failed to adequately review her medical history and performed provocative allergy testing without a physician present.

This conduct if committed in New York State would constitute practicing the profession with negligence on more than one occasion in violation of N.Y. Educ. Law Section 6530(3) (McKinney Supp. 1994) and/or practicing the professions with incompetence in violation of N.Y. Educ. Law Section 6530(5) (McKinney Supp. 1994) and failing to maintain records in violation of N.Y. Educ. Law Section 6530(32) (McKinney Supp. 1994).

Respondent was sentenced by the Connecticut Board to three years probation which included among other requirements that he make certain disclosures to his patients, that he be monitored, that he refrain from making certain assertions to his patients and that he insure that a licensed physician remain at his office premises while allergy testing is being performed on patients.

DATED: New York, New York

August 2, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct