



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

November 10, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Benjamin Yentel, M.D.
4 Cobbles Lane
Dix Hills, New York 11746

Daniel Guenzburger, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Benjamin Yentel, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 97-278) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

**IN THE MATTER
OF
BENJAMIN YENTEL, M.D.**

**DETERMINATION
AND
ORDER
BPMC - 97 - 278**

DIANA E. GARNEAU, M.D., (Chair), HOWARD SIMON, M.D. and MARY PATRICIA MEAGHER, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **DANIEL GUENZBURGER, ESQ.**, Assistant Counsel.

Respondent, **BENJAMIN YENTEL, M.D.**, appeared personally and was not represented by counsel.

A Hearing was held on October 9, 1997. Evidence was received and examined, including a witness who was sworn or affirmed. A transcript of the proceeding was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§ 230 et seq. of the Public Health Law of the State of New York ["**P.H.L.**"]).

This case, brought pursuant to P.H.L. § 230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

BENJAMIN YENTEL, M.D., ("**Respondent**") is charged with professional misconduct within the meaning of § 6530(9)(c) of the Education Law of the State of New York ("**Education Law**"), to wit: professional misconduct ... by reason of ... "having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, ... and when the violation would constitute professional misconduct pursuant to this section (§ 6530)," (Department's Exhibit # 1 and §6530[9][c] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to § 6530(9)(c) of the Education Law, must determine: (1) whether Respondent was found guilty, in an adjudicatory proceeding, of violating a state or federal statute or regulation; (2) that a final decision or determination was issued, with no appeal pending and (3) whether Respondent's violation would constitute professional misconduct under § 6530 of the Education Law.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

¹ P.H.L. § 230(10)(p), fifth sentence.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on March 13, 1966 by the issuance of license number 096251 by the New York State Education Department (Department's Exhibits # 1 & # 2)².

2. Respondent is currently registered to practice medicine in the State of New York (Department's Exhibit # 2).

3. Bruce Kustka attempted to personally serve on Respondent a Notice of Referral Proceeding and a Statement of Charges on at least 3 separate occasions in August 1997 (Department's Exhibit # 1).

4. On August 18, 1997, Michael Nemeroff mailed, by certified mail, a copy of a Notice of Referral Proceeding and a Statement of Charges to Respondent (Department's Exhibit # 1).

5. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (Respondent was timely served and had no objection to the service effected); (P.H.L. § 230[10][d]); (Department's Exhibit # 1); [T-7-9]³.

² Refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit) or by Dr. Yentel (Respondent's Exhibit).

³ Numbers in brackets refer to Hearing transcript page numbers [T-].

6. On February 13, 1997, Peter Mullany, from the Office of Administrative Hearings of the New York State Department of Social Services, issued a decision ("**Decision**") "In the Matter of the Appeal of Benjamin Yentel, M.D.", FH # 2350057N (Department's Exhibit # 3).

7. Said Decision affirmed the determination of the New York State Department of Social Services ("**NYSDSS**") to exclude Respondent from the Medicaid program for two years (Department's Exhibit # 3).

8. Said Decision also affirmed the criticisms of the NYSDSS of Respondent's patient charts for 51 patients seen by Respondent on April 23, 26, 28 and 30, 1994. The NYSDSS criticisms included a failure by Respondent to document the medical necessity for medications, inadequate patient histories, failure to substantiate diagnoses, inadequate physical exams, inadequate evaluation of patient complaints and failure to prescribe medications in proper dosages (Department's Exhibit # 3).

9. Said Decision is annexed hereto as Appendix II. The Findings of Fact and conclusions contained in that Decision are not repeated at length in these Findings of Fact but are accepted by the Hearing Committee and are fully incorporated herein.

10. Respondent was found "guilty" of engaging in unacceptable practices as defined in § 515.2(b)(6)⁴ of Volume 18 of the New York Code of Rules and Regulations ("**NYCRR**") (Department's Exhibit # 3).

11. Respondent was also found "guilty" of failure to comply with the rules and regulations of the NYSDSS, as set forth in 18 NYCRR § 515.2(a)(1); 18 NYCRR § 540.7(a)(10); 18 NYCRR § 518.3; and 18 NYCRR § 515.2(b)(12) (Department's Exhibit # 3).

⁴ Unacceptable recordkeeping. Failing to maintain records necessary to fully disclose the medical necessity for and the nature and extent of the medical care, services or supplies furnished, or to comply with the other requirements of [the Regulations]. (Department's Exhibit # 3).

12. Certain practices of Respondent violated generally accepted medical standards, including: (1) prescription of Tetracycline to a woman who was six months pregnant (sample # 28); (2) prescribing a dosage of Penicillin for two children in excess of the generally accepted dosage for children (samples # 9 & 46) (Department's Exhibits # 3 & 4); (Respondent's Exhibit # B); [T25-34].

13. No further appeals are pending on the above decision, which is a final determination (Department's Exhibit # 3); [T-30-31].

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual Allegations, from the July 29, 1997 Statement of Charges, are SUSTAINED.

The Hearing Committee further concludes, based on the above Factual Conclusion and the entire record that the SPECIFICATION OF CHARGES in the Statement of Charges is SUSTAINED.

DISCUSSION

I Professional Misconduct under §6530(9)(c) of the Education Law.

The Hearing Committee concludes that the Department of Health has shown, by a preponderance of the evidence, that Respondent was found guilty, in an adjudicatory proceeding, of violating the following State regulations: 18 NYCRR 515.2(b)(6); 18 NYCRR § 515.2(a)(1); 18 NYCRR § 540.7(a)(10); 18 NYCRR § 518.3; and 18 NYCRR § 515.2(b)(12).

The record also shows that the February 13, 1997 Decision is a final decision and that no appeal is pending thereon. The Hearing Committee determines that Respondent's conduct is the equivalent of a violation of § 6530(32) of the Education Law, to wit: failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. The Hearing Committee also determines that Respondent's conduct is the equivalent of a violation of § 6530(3) of the Education Law, to wit: practicing the profession with negligence on more than one occasion.

Therefore, the Department of Health has proved, by a preponderance of the evidence, that Respondent's conduct, as alleged in the proceeding of the New York State Department of Social Services does constitute professional medical misconduct under the laws of New York State. The Department of Health has met its burden of proof.

As indicated above, Respondent failed to maintain a record, for each patient indicated, which accurately reflects the evaluation and treatment of the patient.

The Hearing Committee determines that the information contained in the February 13, 1997 Decision of the New York State Department of Social Services was sufficient to show that the records of at least 51 of Respondent's patients were not accurately or properly maintained.

In addition, Respondent's medical judgment and abilities, at least in dealing with certain patients (samples # 28, # 9 & # 46), did not meet generally accepted medical standards. Respondent failed to document the medical necessity for medications, failed to take adequate patient histories, failed to substantiate diagnoses, failed to perform adequate physical exams, failed to adequately evaluate patient complaints and failed to prescribe medications in proper dosages.

The record establishes, and the Hearing Committee finds, that Respondent's conduct, constitutes professional misconduct pursuant to at least § 6530(3) and § 6530(32) of the Education Law.

The Hearing Committee finds that Respondent committed professional misconduct pursuant to § 6530(9)(b) of the Education Law.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent should be placed on probation in New York State for a period of three (3) years from the effective date of this Determination and Order; and Respondent must comply with the terms and conditions of probation contained in Appendix II; and Respondent's license should be limited, for as period of three (3) years to the practice of Internal Medicine with no treatment of individuals under the age of 18 and no treatment of pregnant woman; and Respondent should pursue a course of education or training in proper medical record keeping.

One of the term and condition of probation should include that Respondent's record keeping be closely monitored. Respondent's probation should be supervised by the New York State Department of Health, by the Office of Professional Medical Conduct.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. § 230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service; and (10) probation.

In determining an appropriate measure of discipline to impose, the Hearing Committee is bound by the documentary evidence presented by the Department. Although Respondent personally appeared at the October 9, 1997 Hearing, he failed to provide any mitigation as to the sanctions to be imposed.

The Hearing Committee is not revoking Respondent's license because there were no indications in the record of fraud or bad faith by Respondent. The Hearing Committee believes that suspension of Respondent's license would be inappropriate due to the lack of independent evidence pertaining to the treatment of Respondent's patients. The penalty of Censure and Reprimand is insufficient. The imposition of monetary penalties and performance of public service would serve no purpose under the circumstances presented. The Hearing Committee believes that the limitations on Respondent's license, together with probation and a course of education or training is severe without being punitive. The Hearing Committee believes that Respondent is capable of learning from his errors and is capable of rehabilitation.

Respondent's failure to maintain adequate and accurate medical records should not be condoned. Neither should Respondent's violations of generally acceptable medical standards.

The Hearing Committee was concerned with Respondent's inadequate treatment of the 6 month pregnant woman and the two young children. The Hearing Committee was also concerned that at the Hearing, Respondent had still not acknowledged his inadequate treatment of those individuals.

The Hearing Committee considers Respondent's conduct to be serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that the sanction imposed above strikes the appropriate balance between the need to fairly punish Respondent, deter future misconduct and protect the public.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

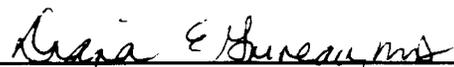
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Department's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's **LICENSE** to practice medicine **IS LIMITED**, for as period of **three (3) years**, to the practice of Internal Medicine with no treatment of individuals under the age of 18 and no treatment of pregnant woman; and
3. Respondent must pursue, and successfully complete, within ninety (90) days of this Determination and Order, a course of **EDUCATION OR TRAINING IN** proper **MEDICAL RECORD KEEPING**; and
4. Respondent shall be on **PROBATION** in New York State for a period of **three (3) years** from the effective date of this Determination and Order; and
5. The complete terms of probation are attached to this Determination and Order in Appendix II and are incorporated herein; and
6. Respondent's probation shall be supervised by the New York State Department of Health, Office for Professional Medical Conduct; and
7. In the event that Respondent leaves New York to practice outside the State, the above periods of probation and license limitations shall be tolled until Respondent returns to practice in New York State.

DATED: Albany, New York
October 30, 1997



DIANA E. GARNEAU, M.D., (Chair),
HOWARD SIMON, M.D.
MARY PATRICIA MEAGHER

TO:

Benjamin Yentel, M.D.
4 Cobbles Lane
Dix Hills, NY 11746

Daniel Guenzburger, Esq.
Assistant Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

APPENDIX I

IN THE MATTER
OF
BENJAMIN YENTEL, M.D.

STATEMENT
OF
CHARGES

BENJAMIN YENTEL, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 1, 1966, by the issuance of license number 096251 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about February 13, 1997 the Respondent was found guilty by the New York State Department of Social Services ("DSS"), after an adjudicatory proceeding, of committing an unacceptable practice as defined in Title 18, Chapter II, §515.2 (b)(6)("Unacceptable Recordkeeping") and §515.2(b)(12)("Failure to meet recognized medical standards"). The DSS found that Respondent failed to maintain records that fully disclosed the necessity for and the nature and extent of services that Respondent ordered. Further, the DSS found that Respondent inappropriately prescribed Tetracycline to a pregnant woman without adequately considering alternatives that did not have the adverse side effect that Tetracycline may have on a pregnant woman. The DSS also found that Respondent prescribed a pediatric patient a dosage of Penicillin in excess of the generally accepted dosage for a child. No appeal is pending of the decision. The DSS excluded the Respondent from the Medicaid program for a two year period.

SPECIFICATION OF CHARGES

SPECIFICATION

HAVING BEEN FOUND GUILTY IN AN ADJUDICATORY PROCEEDING

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(c)(McKinney Supp. 1997) for having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, when no appeals is pending, and where the conduct upon which the finding of violation was based would constitute professional misconduct under N.Y. Educ. Law §6530. The conduct upon which the finding of violation was based constitutes professional misconduct under N.Y. Educ. Law §6530(3)("Negligence on more than one occasion"); N.Y. Educ. Law §6530(5)("Incompetence on more than one occasion") and N.Y. Educ. Law §6530(32)("Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient."), as alleged in the facts of the following:

1. Paragraph A.

DATED: July 27, 1997
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

APPENDIX II
TERMS OF PROBATION

1. 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 imposed by law and by his profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct, ("OPMC") Hedley Park Place, 433 River Street, Suite 303, Troy, New York 12180-2299, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

5. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. The probation periods shall be tolled until the Respondent returns to practice in New York State.

6. Respondent shall have quarterly meetings with an employee or designee of OPMC during the periods of probation. In these quarterly meetings, Respondent's professional performance may be reviewed by inspecting selections of office records, patient records and hospital charts.

7. Respondent shall submit semi-annual declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation (including the practice limitation/restriction set forth in the Determination and Order) and, if not, the specifics of such non-compliance. These declarations and a Practice Restriction Declaration shall be sent to the Director of the OPMC at the address indicated above.

8. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice medicine as a physician in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

9. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. These records will contain a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment, together with all other information required by State rules and regulations regarding controlled substances.

10. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On 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 Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.

11. All expenses, including but not limited to those, of complying with these terms of probation and the Determination and Order, including retraining and monitoring, shall be the sole responsibility of Respondent.

12. Respondent shall take and complete a course in medical record keeping, or equivalent program proposed by Respondent and said course or program shall be subject to the prior written approval of the Director of the OPMC. Respondent shall complete said course or program within ninety (90) days of the effective date of this Determination and Order, unless the Director of the OPMC approves an extension in writing.