

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299
www.health.ny.gov

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

April 6, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen Henry Goldberger, M.D.
P.O. Box 920
808 Buffalo Street
Farmville, Virginia 23901

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Stephen Henry Goldberger, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-81) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,


James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER

OF

STEPHEN HENRY GOLDBERGER, M.D.

COPY
DETERMINATION

AND

ORDER
BPMC #11-81

A hearing was held on March 24, 2011, 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 November 10, 2010, were served upon the Respondent, **Stephen Henry Goldberger, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Therese G. Lynch, M.D.**, Chair, **James R. Dickson, M.D.**, and, **Virginia R. Marty**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Michael G. Bass, Esq.**, of Counsel. The Respondent, **Stephen Henry Goldberger, M.D.**, did not appear, although duly served. Evidence was received 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 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 §6530(9)(b) and §6530(9)(d) by having been disciplined after being found guilty of improper 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. Specifically, the Respondent was found guilty of professional misconduct in the Commonwealth of Virginia for several enumerated charges as set forth in findings of fact below. The misconduct included erratic and disruptive behavior in the workplace and sexual misconduct with a nurse in the O.R. This sexual misconduct included inappropriate comments to a female in 2005 and the pinching of a female nurse with forceps in 2006. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 2.

WITNESSES

For the Petitioner: None
For the Respondent: None

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. The Respondent, Stephen Henry Goldberger, M.D., did not appear, although duly served. (Petitioner's Exhibit 2.)
2. Stephen Henry Goldberger, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1974, by the issuance of license number 120336 by the New York State Education Department (Petitioner's Ex. 4).
3. On or about August 26, 2009, the Virginia Board of Medicine, (hereinafter "Virginia Board"), by a Consent Order, (hereinafter "Virginia Order"), *inter alia*, placed Respondent on Indefinite Probation, based on the following Findings of Fact:

- a. On or about January 29, 2009, Respondent became upset with hospital staff during a surgical procedure on a pediatric patient, at which time he yelled and threw a myringotomy knife that bounced and landed on the floor;
- b. In June of 2005, Respondent was asked to meet a female candidate for the position of operating room ("OR") director to whom he made an inappropriate comment for which he received counseling;
- c. In October of 2005, a nurse filed a complaint against Respondent for pinching her with forceps while in the OR;
- d. In November of 2006, Respondent made an inappropriate comment to a patient during treatment which prompted a recommendation by the Medical Executive Committee ("MEC") of the hospital that he undergo a psychological evaluation;
- e. In July of 2008, the OR Director, a nurse, made a complaint against Respondent for disruptive behavior when Respondent became upset that an operating table was not in the right position;
- f. On February 17, 2009, the MEC again required Respondent to undergo a formal psychological evaluation within thirty (30) days due to his erratic and disruptive behavior in the workplace and his hospital privileges were placed on a seven day suspension after the MEC performed an extensive review of his workplace behavior dating back to 2005;
- g. On or about March 25, 2009, Respondent was diagnosed with [REDACTED] [REDACTED] combined with disruptive behavior in the workplace and the evaluator recommended intensive, residential level treatment and was not

confident in Dr. Goldberger's ability to meet all of his professional duties at that time.

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

New York Education Law §6530(8) (having a psychiatric condition, which impairs the licensee's ability to practice).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

"Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper 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 §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the 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

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibits 2 and 3) and documentation of the Respondent's correspondence with the Department (Petitioner's Exhibit 9), ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent and that the hearing could proceed on the merits notwithstanding the Respondent's absence. It was clear that the Respondent was aware of the present proceeding and chose not to appear. There was thus no dispute about jurisdiction. There was also no dispute about the basic facts of this case. The Respondent acknowledged in his letter to the Department that he had signed the Virginia Consent Order, which is set forth in the present record as Petitioner's Exhibit 6.

In his letter to the Department, Petitioner's Exhibit 9, the Respondent stated, that, although he did sign the Virginia Order, he felt it did not accurately reflect the context of the events noted. The panel read the Respondent's letter but did not accept this attempt to relitigate the underlying facts.

The panel accepts the findings of fact in the Virginia Consent Order and these facts show that the Respondent was abusive to female workers and erratic and disruptive in the workplace. The record shows that the Respondent was diagnosed with [REDACTED] [REDACTED] combined with disruptive behavior in the workplace.

It appears that Dr. Goldberger took a medical leave in 2009 and then entered intensive psychotherapy to treat his condition. After this treatment and medication, Dr. Goldberger was deemed safe to return to practice at his hospital and in September of 2010 the indefinite suspension of the Consent Order was terminated and the Board of Medicine of the Commonwealth of Virginia lifted the restrictions on his license. (Petitioner's Exhibit 6).

The panel believed the Respondent when he stated in his letter that he had made amends for his outburst and that he had paid his debt to society. Nevertheless, the panel was troubled by the acknowledged abuse of the female nurses in this case and was concerned for the protection of New York nurses and patients should the Respondent attempt to practice here.

The panel considered the full range of penalties available in this case and determined, unanimously, that a Censure and Reprimand coupled with a five-year probation would be an appropriate penalty. Furthermore, the panel directed that this probation be tolled until such time as the Respondent moves to New York and begins practice here. It was also directed that the Respondent be evaluated psychiatrically as part of his probation and not be permitted to practice until the Director of OPMC is satisfied with the condition of his mental health. In addition the panel directed that there be a chaperone provided when the Respondent is with female patients.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**.
2. The Respondent is hereby Censured and Reprimanded for his conduct.
3. Respondent is placed on a term of probation of five years. The terms of the probation are attached hereto as Appendix I and are incorporated into this Order.
4. The Respondent is Ordered to submit to a competency evaluation and pass this evaluation before he may resume the practice of medicine in New York. This evaluation and test shall be done at the Respondent's expense and shall be done by an institution approved by OPMC.
5. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Pittsford, New York
April 4, 2011



Therese G. Lynch, M.D., Chair

James R. Dickson, M.D.
Virginia R. Marty

To:

Stephen Henry Goldberger, M.D.,
Respondent
P.O. Box 920
808 Buffalo Street
Farmville, VA 23901

Michael G. Bass, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX 1

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 and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any 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 thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Throughout the period of probation, Respondent shall practice medicine only when a practice monitor shall be present in his office. The practice monitor shall be on-site during office hours, unless determined otherwise by the Director of OPMC. The practice monitor shall be proposed by the Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall not be a family member or personal friend, or be in a professional relationship, which could pose a conflict with supervision responsibilities.
5. Respondent shall ensure that the practice monitor is familiar with the Order and terms of probation, and be aware of the sexual misconduct issues in this case, and be willing to report to OPMC. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's medical practice and conduct. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC. The practice monitor shall insure that a female chaperone is present whenever the Respondent is treating a female patient.
6. Respondent shall authorize the practice monitor to have access to patient records and to submit quarterly written reports to the Director of OPMC, regarding Respondent's practice, including, but not limited to procedures for obtaining written consent to procedures and appropriate chaperoning of patients, These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, and other such on-duty conduct as the practice monitor deems appropriate to report

7. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, Respondent shall then notify the Director 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 Respondent's return to practice in New York State.
8. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
9. At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional or program designated by the Director (hereafter "Evaluator.") Respondent shall provide the Evaluator with a copy of this Order and copies of all previous treatment records. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Evaluator. The Evaluator shall report to the Director regarding Respondent's condition and fitness or incapacity to practice medicine. Respondent shall comply with all treatment recommendations based upon the evaluation; failure to comply with such treatment recommendations shall constitute professional misconduct.
10. Respondent shall enroll, or continue enrollment, in the Committee for Physician Health (CPH) and shall engage in a contract with CPH that defines the terms, conditions and duration of Respondent's recovery program. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and with this Order, including full access to all records maintained by CPH will respect to Respondent.
 - a. Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's impairment is not substantially alleviated by treatment.
 - b. Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.

APPENDIX 2



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

IN THE MATTER
OF
STEPHEN HENRY GOLDBERGER, M.D.
CO-09-09-5973-A

NOTICE OF
REFERRAL
PROCEEDING

TO: STEPHEN HENRY GOLDBERGER, M.D.
PO Box 920
808 Buffalo Street
Farmville, VA 23901

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 Procedures Act §§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 January, 2011, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

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 not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here [REDACTED]

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 (5) 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

November 10, 2010



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

Inquiries should be addressed to:

Michael G. Bass
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER
OF
STEPHEN HENRY GOLDBERGER, M.D.
CO-09-09-5973-A

STATEMENT
OF
CHARGES

STEPHEN HENRY GOLDBERGER, M.D., Respondent, was authorized to practice medicine in New York state on July 1, 1974, by the issuance of license number 120336 by the New York State Education Department.

FACTUAL ALLEGATIONS

A On or about August 26, 2009, the Virginia Board of Medicine, (hereinafter "Virginia Board"), by a Consent Order, (hereinafter "Virginia Order"), inter alia, placed Respondent on Indefinite Probation, based on the following Findings of Fact: On or about January 29, 2009, Respondent became upset with hospital staff during a surgical procedure on a pediatric patient, at which time he yelled and threw a myringotomy knife that bounced and landed on the floor; in June 2005, Respondent was asked to meet a female candidate for the position of operating room ("OR") director to whom he made an inappropriate comment for which he received counseling; in October 2005, a nurse filed a complaint against Respondent for pinching her with forceps while in the OR; in November 2006, Respondent made an inappropriate comment to a patient during treatment which prompted a recommendation by the Medical Executive Committee ("MEC") of the hospital that he undergo a psychological evaluation; in July 2008, the OR Director, a nurse, made a complaint against Respondent for disruptive behavior when Respondent became upset that an operating table was not in the right position; On February 17, 2009, the MEC again required Respondent to undergo a formal psychological evaluation within thirty (30) days due to his erratic and disruptive behavior in the workplace and his hospital privileges were placed on a seven day suspension after the MEC performed an extensive review of his workplace behavior dating back to 2005; on or about March 25, 2009, Respondent was diagnosed with [REDACTED] combined with disruptive behavior in the workplace and the evaluator recommended intensive, residential-level treatment and was not confident in Dr. Goldberger's ability to meet all of his professional duties at that time.

B. The conduct resulting in the Virginia Board disciplinary actions 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(8) (having a psychiatric condition which impairs the licensee's ability to practice).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper 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, in that Petitioner charges:


1. The facts in Paragraphs A and B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the 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 B.

DATED: *November 10*, 2010
Albany, New York


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