



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Public

February 3, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Jonathan D. Weston, M.D.  
495 North Cleveland Avenue  
Winston-Salem, NC 27101

**RE: In the Matter of Jonathan D. Weston, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-30) 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,

REDACTED

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
JONATHAN D. WESTON, M.D. : ORDER  
CO-10-03-1502-A :  
-----X

BPMC #11-30

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated November 24, 2010, were served upon the Respondent, Jonathan D. Weston, M.D. LYON M. GREENBERG, M.D. (Chair), WILLIAM A. TEDESCO, M.D., and DAVID F. IRVINE, DHSc, R.P.A.-C, 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. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Michael G. Bass, Esq., Assistant Counsel. The Respondent did not appear, either in person or by counsel. A hearing was held on January 19, 2011. 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 §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 §6530(9)(b) and (d), in that the North Carolina Medical Board, by Consent Order, suspended Respondent's license to practice medicine for twelve months, stayed the suspension and placed him on probation. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

Respondent was unable to attend the hearing in person. However, he did file an Answer (Exhibit A), as well as an Affidavit with supporting documents (Exhibits B and C). These documents were considered by the Hearing Committee in reaching its Conclusions of Law and Determination regarding the sanction to be imposed.

### 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. Jonathan D. Weston, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on September 24, 1976 by the issuance of license number 128809 by the New York State Education Department. (Ex. #4).

2. On or about January 12, 2010, the North Carolina Medical Board (hereinafter "North Carolina Board"), by Consent Order, suspended Respondent's license to practice medicine for twelve months, stayed the suspension, and placed Respondent on probation. The terms of probation included the restriction that Respondent not perform outpatient surgical procedures. (Exhibit #5).

3. The basis of the North Carolina Board's action was that Respondent performed an incomplete dilation and evacuation procedure at an outpatient clinic which caused heavy bleeding (later determined to have been due to a uterine perforation). Respondent permitted the patient's mother to transport her to a

hospital in lieu of ordering an ambulance, and he did not have hospital privileges or an agreement with another physician to provide coverage for patients requiring hospitalization. In addition, Respondent had been issued a Public Letter of Concern by the North Carolina Board on November 19, 2007 for performing outpatient surgical procedures without having hospital privileges. (Exhibit #5).

#### 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 evidence established that Respondent's North Carolina medical license was suspended by the North Carolina Board, with the suspension stayed, and Respondent placed on probation. This action was taken by consent agreement, following the institution of proceedings against Respondent. The 2009 incident involving the incomplete dilation and evacuation procedure occurred after Respondent had previously received a Public Letter of Concern in 2007 regarding his provision of outpatient surgery without hospital privileges or physician backup arrangements.

Respondent's conduct would constitute negligence on more than one occasion, as defined by Education Law §6530(3), had the conduct occurred in New York State. Accordingly, we find that he

is guilty of professional misconduct in violation of New York Education Law §6530(9)(b) and §6530(9)(d). Therefore, the First and Second Specifications of professional misconduct set forth in the Statement of Charges are sustained.

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 placed on probation for a period of one year, with the condition that he not perform outpatient surgery without arrangements for physician backup coverage. 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.

The Affidavit submitted by Respondent indicates that he has successfully completed the term of probation imposed by the North Carolina Board, and that he can now practice without limitation. He asked that this Committee impose no sanction more severe than that of the North Carolina Board. Alternatively, he requested that the matter be dismissed in the interests of justice. The Department does not dispute that Respondent has complied with his term of probation, but asked that a permanent

restriction against performing outpatient surgery be placed on Respondent's New York medical license, in addition to the imposition of a censure and reprimand.

We are appreciative of the fact that Respondent has completed his term of probation in North Carolina. Nevertheless, we have an independent responsibility to protect the health and safety of New York residents. We unanimously determined that Respondent should be placed on probation for one year, in the event that he should desire to return to practice in New York. During the period of probation, he shall be restricted from performing outpatient surgery, in the absence of adequate backup coverage arrangements.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) are SUSTAINED;
2. Respondent's license to practice medicine in New York State be and hereby is placed on PROBATION for a period of ONE (1) Year from the effective date of this Determination and Order. The complete terms of probation are set forth in Appendix II and



incorporated herein;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York

*Feb 1st* . 2011

REDACTED

LYON M. GREENBERG, M.D. (CHAIR)

WILLIAM A. TEDESCO, M.D.

DAVID F. IRVINE, DHS, R.P.A.-C

TO: Michael G. Bass, Esq.  
Assistant Counsel  
New York State Department of Health  
Corning Tower, Room 2512  
Albany, New York 12237

Jonathan D. Weston, M.D.  
495 North Cleveland Avenue  
Winston-Salem, NC 27101

APPENDIX I

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER  
OF  
JONATHAN D. WESTON, M.D.  
CO-10-03-1502-A

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STATEMENT  
OF  
CHARGES

JONATHAN D. WESTON, M.D., Respondent, was authorized to practice medicine in New York state on September 24, 1976, by the issuance of license number 128809 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A On or about January 12, 2010, the North Carolina Medical Board, (hereinafter "North Carolina Board"), by Consent Order, suspended Respondent's license to practice medicine for 12 months, stayed, and placed Respondent on probation, including the restriction that Respondent shall not perform outpatient surgical procedures. The basis of the North Carolina Board's action was that Respondent performed a dilation and evacuation procedure at an outpatient clinic which was incomplete and caused heavy bleeding (later determined that the patient suffered a uterine perforation), that Respondent permitted the patient's mother to transport her to a hospital in lieu of ordering an ambulance, that Respondent did not have hospital privileges or an agreement with another physician to provide coverage for patients requiring hospitalization and that on November 19, 2007, Respondent had been issued a Public Letter of Concern for performing outpatient surgical procedures without having hospital privileges.

B. The conduct resulting in the North Carolina Board disciplinary action 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(3) (negligence on more than one occasion);  
and/or
2. New York Education Law §6530(4) (gross negligence).

**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 24*, 2010  
Albany, New York

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

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 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. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. 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.
6. 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.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall not perform any outpatient surgical procedures during the period of probation without prior arrangements for emergency physician backup coverage, acceptable to the Director of OPMC.
9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.