



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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OFFICE OF
MEDICAL CONDUCT

February 13, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Stein, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

John W. Schermer, M.D.
52 Dwight Place
Englewood, New Jersey 07631

Kevin Roe, Esq.
425 Summit Avenue
Hackensack, New Jersey 07601

RE: In the Matter of John W. Schermer, M.D.

Effective Date: 02/20/95

Dear Mr. Stein, Mr. Roe and Dr. Schermer:

Enclosed please find the Determination and Order (No. 95-37) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "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 all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

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**IN THE MATTER : DETERMINATION
OF : AND
JOHN W. SCHERMER, M.D. : ORDER**

-----X

BPMC-95-37

A Notice of Referral Proceedings and Statement of Charges, both dated August 8, 1994 were served upon the Respondent, **JOHN W. SCHERMER, M.D.** **ROBERT BRUCE BERGMANN, M.D.**, Chairman, **HENRY PINSKER, M.D.** and **EUGENIA HERBST**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on January 31, 1995. The Department appeared by Peter J. Millock, Esq., General Counsel, by Paul Stein, Esq., of Counsel. The Respondent failed to appear.

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 CHARGES

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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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. All Hearing Committee findings were unanimous unless otherwise specified.

1. JOHN W. SCHERMER, M.D., the Respondent, was authorized to practice medicine in New York State on June 8, 1962, by the issuance of license number 087444 by the New York State Education Department.

2. By **FINAL DECISION AND ORDER**, dated August 30, 1994, the Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners of the State of New Jersey, adopted the findings of fact, conclusions of law and recommended penalties contained in the initial decision of Administrative Law Judge Edith Klinger, dated June 7, 1994, which found that the Respondent had engaged in sexual abuse of three female patients and failed to keep required treatment records of these patients in violation of New Jersey statutes (Pet's. Ex. 3).

3. The Board of Medical Examiners of the State of New Jersey **REVOKED** the Respondent's license to practice medicine in New Jersey; Ordered the Respondent to pay a monetary penalty of \$70,500; and Ordered payment of costs to the State of New Jersey (Petitioner's Ex. 3).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

I. The Respondent is charged with professional misconduct within the meaning of New York Education Law Section 6530(9)(d) (McKinney Supp. 1994), in that he had his license to practice medicine, revoked, suspended or had other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State.

SUSTAINED (3-0)

SECOND SPECIFICATION

II. The Respondent is charged with professional misconduct within the meaning of New York Education Law Section 6530(9)(b) (McKinney Supp. 1994), in that he has 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.

SUSTAINED (3-0)

DETERMINATION OF THE HEARING COMMITTEE

The Board of Professional Medical Examiners of the State of New Jersey found that the Respondent had engaged in sexual abuse of three female patients and failed to keep required treatment records for these patients. The New Jersey Board **REVOKED** the Respondent's license to practice medicine in that state.

The Respondent did not appear at the present hearing nor did he submit any evidence or documentation in mitigation of the charges.

The Hearing Committee determines unanimously (3-0) that the Respondent's license to practice medicine in New York State should be **REVOKED**.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is hereby

REVOKED.

2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Massapequa, New York

February 2, 1995


ROBERT BRUCE BERGMANN, M.D., (CHAIRMAN)

**HARVEY PINSKER, M.D.
EUGENIA HERBST**