

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

IN THE MATTER
OF
HERBERT SCHWARZ, M.D.

COMMISSIONER'S
ORDER AND
NOTICE OF
HEARING

TO: Herbert Schwarz, M.D.
186 Grand View Blvd.
Yonkers, New York 10710

The undersigned, Barbara A. DeBuono, M.D., M.P.H., Commissioner of Health of the State of New York, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by HERBERT SCHWARZ, M.D., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12) (McKinney Supp. 1995), that effective immediately HERBERT SCHWARZ, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12) (McKinney Supp. 1995).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1995), and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1995). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on August 24, 1995, at 10:00 a.m., at the offices of the New York State Health Department, 5 Penn Plaza, Sixth Floor, New

York, NY 10001, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Empire State Plaza, Corning Tower Building, 25th Floor, Albany, New York 12237-0026 and by telephone (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a (McKinney Supp. 1995). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
August 16, 1995



BARBARA A. DeBUONO, M.D., M.P.H.
Commissioner of Health

Inquiries should be directed to:

Silvia P. Finkelstein
Associate Counsel
N.Y.S. Department of Health
Division of Legal Affairs
5 Penn Plaza
Suite 601
New York, New York 10001
(212) - 613-2615

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

IN THE MATTER
OF
HERBERT SCHWARZ, M.D.

STATEMENT
OF
CHARGES

HERBERT SCHWARZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 14, 1963, by the issuance of license number 091304 by the New York State Education Department. Said license was suspended by action of the Board of Regents from September 24, 1982 through March 23, 1983, and was thereafter placed on probation for 18 months. The period of probation ended on September 23, 1984.

FACTUAL ALLEGATIONS

- A. Respondent, treated Patient A, age 36, on or about March 16, 1995, March 17, 1995, March 19, 1995, and/or March 20, 1995, at his office located at 65 East 96th Street, New York, New York 10128. (The identities of Patient A and the other patients are disclosed in the attached Appendix).
1. At all the dates above mentioned, Respondent failed to obtain and note an adequate medical history.
 2. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
 3. Respondent failed to provide or note in the chart that appropriate counseling was given to the patient with regard to the termination of pregnancy.

4. Respondent failed to adequately evaluate fetal size and/or age, prior to attempting to terminate the pregnancy.
5. Despite the fact that Patient A evidenced placenta previa, Respondent failed to adequately address said condition.
6. On or about March 16, March 17 through March 19, and/or March 20, Respondent attempted to terminate a third trimester pregnancy, in his office, without adequate resuscitative equipment available and in the absence of clinical support personnel.
7. Respondent failed to take or note in the chart vital signs of the Patient prior, during, and subsequent to the attempts to terminate Patient A's pregnancy.
8. On or about March 16, 1995 Respondent inserted 3 Laminaria and sent the Patient home. On or about March 17, 1995, Respondent inserted another Laminaria and gave the patient a Prostin suppository with instructions to self-inset it at bedtime, at home. On or about March 18, 1995, the patient returned to Respondent's office and was given another Prostin suppository to be self-inserted at bedtime, at home. The patient was inappropriately sent home with instructions that if the abortion happened she should bring the conception material back to Respondent's office in two plastic bags. On or about March 20, 1995, Patient A returned to Respondent's office at which time Respondent injected her abdomen several times, noted the presence of bleeding and nevertheless inappropriately sent the patient home. On or about March 21, 1995, Patient A was admitted at Long Beach Memorial Hospital's Emergency

Department, hemorrhaging, febrile and in shock. Patient A was transfused and an emergency hysterotomy was performed with findings of a complete placental abruption and fetal demise of a 28 week size fetus.

B. Respondent treated Patient B, age 14, on or about February 6 and/or February 7, 1995, at his office located at 65 East 96th Street, New York, New York 10128.

1. At all the dates above mentioned, Respondent failed to obtain and note and adequate medical history.
2. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
3. Respondent failed to provide or note in the chart that appropriate counseling was given to the patient with regard to the termination of pregnancy.
4. Respondent failed to obtain consent from the Patient for said termination of pregnancy.
5. On or about February 7, 1995, Respondent failed to take or note in the chart vital signs of the patient prior, during, and subsequent to the termination of pregnancy.
6. Although Respondent knew that Patient B had a history of asthma he inappropriately administered general anesthesia by injecting Ketalar IV push, in the absence of adequate resuscitative equipment.
7. Respondent failed to note the timing and amount of anesthetic agent (Ketalar) administered to this patient.

8. Respondent failed to evaluate the tissue to determine that all of the necessary products of conception were removed during the termination of pregnancy on or about February 7, 1995.

C. Respondent treated Patient C, age 18, on or about November 17, 1994, at his office located at 65 East 96th Street, New York, New York 10128.

1. Respondent failed to obtain and note an adequate medical history.
2. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient to properly diagnose her condition.
3. Respondent failed to provide or note in the chart that appropriate counseling was given to the patient with regard to the termination of pregnancy performed on or about November 17, 1995.
4. Respondent failed to obtain consent from the Patient for said termination of pregnancy.
5. On or about November 17, 1994, Respondent failed to take or note in the chart vital signs of the patient prior, during, and subsequent to the termination of pregnancy.
6. Despite the fact that Patient C evidenced a risk for ectopic pregnancy, Respondent failed to adequately follow-up on the condition of the patient and failed to note any such follow-up.
7. Respondent inappropriately administered general anesthesia to this patient by injecting Ketalar IV push, in the absence of adequate resuscitative equipment.
8. Respondent failed to evaluate the tissue to determine that all of

the necessary products of conception were removed during the termination of pregnancy on or about November 17, 1995.

D. Respondent treated Patient D, age 16, on or about December 5, 1994, at his office located at 65 East 96th Street, New York, New York 10128.

1. Respondent failed to obtain and note an adequate medical history.
2. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
3. Respondent failed to provide or note in the chart that appropriate counseling was given to the patient with regard to the termination of pregnancy.
4. On or about December 5, 1994, Respondent failed to take or note in the chart vital signs of the patient prior, during, and subsequent to the termination of pregnancy.
5. Respondent failed to note in the chart what procedure was performed upon this patient on or about December 6, 1994, to terminate an 18 week pregnancy.
6. On or about December 6, 1994, Respondent inappropriately terminated an 18 week pregnancy in his office, without adequate resuscitative equipment available and in the absence of clinical support personnel.
7. Respondent failed to note the timing, type and amount of anesthetic agent administered to this patient, if any.
8. Respondent failed to evaluate the tissue to determine that all of

the necessary products of conception were removed during the termination of pregnancy on or about December 6, 1994.

- E. Respondent treated Patient E, age 16, on or about December 4, 1994, December 5, 1994, December 6, 1994 and/or December 20, 1994, at his office located at 65 East 96th Street, New York, New York 10128.
1. At all the dates above mentioned, Respondent failed to obtain and note an adequate medical history.
 2. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
 3. On or about December 6, 1994, Respondent inappropriately terminated a 21 week pregnancy with the aid of "mechanical help", in his office, without adequate resuscitative equipment available and in the absence of clinical support personnel.
 4. Respondent failed to note in the chart what procedure was performed upon this patient on or about December 6, 1994.
 5. Respondent failed to take or note in the chart vital signs of the Patient prior, during, and subsequent to the termination of Patient E's pregnancy.
 6. Respondent failed to note the timing, type and amount of anesthetic agent administered to this patient.
 7. Respondent failed to evaluate the tissue to determine that all of the necessary products of conception were removed during the termination of pregnancy on or about December 6, 1994.

F. Respondent treated Patient F, age 23, on or about May 17, 1995 and May 18, 1995, at his office located at 65 East 96th Street, New York, New York 10128.

1. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
2. Respondent failed to take or note in the chart vital signs of the Patient prior, during, and subsequent to the termination of Patient F's pregnancy.
3. Respondent inappropriately administered general anesthesia to this patient by injecting Ketalar IV push, in the absence of adequate resuscitative equipment.
4. Respondent failed to note the timing and amount of anesthetic agent administered to this patient.
5. Respondent failed to evaluate the tissue to determine that all of the necessary products of conception were removed during the termination of pregnancy on or about May 18, 1995.

G. Respondent treated Patient G, age 30, on or about May 10, 1995, at his office located at 65 East 96th Street, New York, New York 10128.

1. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
2. Respondent failed to adequately evaluate fetal size and/or age, prior to attempting to terminate the pregnancy.
3. Respondent failed to provide or note in the chart that appropriate counseling was given to the patient with regard to the termination of pregnancy.

4. On or about December 5, 1994, Respondent failed to take or note in the chart vital signs of the patient prior, during, and subsequent to the termination of pregnancy.
 5. Respondent inappropriately administered general anesthesia to this patient by injecting Ketalar IV push, in the absence of adequate resuscitative equipment.
 6. Respondent failed to evaluate the tissue to determine that all of the necessary products of conception were removed during the termination of pregnancy on or about May 10, 1995.
- H. Respondent treated Patient H, age 17, on or about November 26, 1994, December 5, 1994 and/or December 6, 1994, at his office located at 65 East 96th Street, New York, New York 10128.
1. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
 2. On or about December 6, 1994, Respondent inappropriately terminated a 21 week pregnancy in his office, without adequate resuscitative equipment available and in the absence of clinical support personnel.
 3. Respondent failed to note in the chart what procedure was performed upon this patient on or about December 6, 1994.
 4. Respondent failed to take or note in the chart vital signs of the patient prior, during, and subsequent to the termination of pregnancy.
 5. Respondent failed to note the timing, type and amount of anesthetic agent administered to this patient.

6. Respondent failed to evaluate the tissue to determine that all of the necessary products of conception were removed during the termination of pregnancy on or about December 6, 1994.
- I. Respondent treated Patient I, age 18, on or about April 6, 1995 and April 7, 1995, at his office located at 65 East 96th Street, New York, New York 10128.
 1. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
 2. On or about April 6 or April 7, 1995, Respondent inappropriately terminated a 17 week pregnancy in his office, without adequate resuscitative equipment available and in the absence of clinical support personnel.
 3. Respondent failed to take or note in the chart vital signs of the patient prior, during, and subsequent to the termination of pregnancy.
 4. Respondent inappropriately administered general anesthesia to this patient by injecting Ketalar IV push, in the absence of adequate resuscitative equipment.
 5. Respondent failed to evaluate the tissue to determine that all of the necessary products of conception were removed during the termination of pregnancy on or about April 6 or April 7, 1995.
 - J. Respondent treated Patient J, age 36, on or about May 3 or May 9, May 10 and May 11, 1995, at his office located at 65 East 96th Street, New York, New York 10128.

1. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
2. On or about May 3 and/or May 11, 1995, despite the fact that Respondent knew Patient J was Rh negative and the risks inherent therein, Respondent inappropriately terminated an approximately 18 week pregnancy in his office, without adequate resuscitative equipment available and in the absence of clinical support personnel.
3. Respondent failed to take or note in the chart vital signs of the patient prior, during, and subsequent to the termination of pregnancy.
4. Respondent administered general anesthesia to this patient by injecting Ketalar IV push, in the absence of adequate resuscitative equipment.
5. Respondent failed to evaluate the tissue to determine that all of the necessary products of conception were removed during the termination of pregnancy on or about May 3 and/or May 11, 1995.

K. Respondent treated Patient K, age 20, on or about May 22 and May 23, 1995, at his office located at 65 East 96th Street, New York, New York 10128.

1. Respondent failed to obtain and note an adequate medical history.
2. Respondent failed to perform necessary laboratory and/or diagnostic tests upon this patient.
3. On or about May 22 and/or May 23, 1995, Respondent innappropriately terminated an approximately 18 week pregnancy

in his office, by saline infusion, without adequate resuscitative equipment available and in the absence of clinical support personnel.

4. Respondent failed to take or note in the chart vital signs of the patient prior, during, and subsequent to the termination of pregnancy.
5. Respondent failed to note the timing, type and amount of anesthetic agent administered to this patient, if any.
6. Respondent failed to evaluate the tissue to determine that all of the necessary products of conception were removed during the termination of pregnancy on or about May 22 and/or May 23, 1995.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with practicing the profession with negligence on more than one occasion under N.Y. Educ. Law § 6530(3) (McKinney Supp. 1995), in that Petitioner charges Respondent with having committed at least two of the following:

1. The facts contained in paragraphs A, A1, 2, 3, 4, 5, 6, 7, and/or 8, B, B1, 2, 3, 4, 5, 6, 7, and/or 8, C, C1, 2, 3, 4, 5, 6, 7, and/or 8, D, D1, 2, 3, 4, 5, 6, 7, and/or 8, E, E1, 2, 3, 4, 5, 6, and/or 7, F, F1, 2, 3, 4, and/or 5, G, G1, 2, 3, 4, 5, and/or 6, H, H1, 2, 3, 4, 5, and/or 6, I, I1, 2, 3, 4, and/or 5, J, J1, 2, 3, 4, and/or 5, K, K1, 2, 3,

4, 5, and/or 6.

SECOND THROUGH TWELFTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 1995) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

2. Paragraph A, A1, 2, 3, 4, 5, 6, 7, and/or 8.
3. Paragraph B, B1, 2, 3, 4, 5, 6, 7, and/or 8.
4. Paragraph C, C1, 2, 3, 4, 5, 6, 7, and/or 8.
5. Paragraph D, D1, 2, 3, 4, 5, 6, 7, and/or 8.
6. Paragraph E, E1, 2, 3, 4, 5, 6, and/or 7.
7. Paragraph F, F1, 2, 3, 4, and/or 5.
8. Paragraph G, G1, 2, 3, 4, 5, and/or 6.
9. Paragraph H, H1, 2, 3, 4, 5, and/or 6.
10. Paragraph I, I1, 2, 3, 4, and/or 5.
11. Paragraph J, J1, 2, 3, 4, and/or 5.
12. Paragraph K, K1, 2, 3, 4, 5, and/or 6.

THIRTEENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1995) by practicing the profession of

medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

13. The facts contained in paragraphs A, A1, 2, 3, 4, 5, 6, 7, and/or 8, B, B1, 2, 3, 4, 5, 6, 7, and/or 8, C, C1, 2, 3, 4, 5, 6, 7, and/or 8, D, D1, 2, 3, 4, 5, 6, 7, and/or 8, E, E1, 2, 3, 4, 5, 6, and/or 7, F, F1, 2, 3, 4, and/or 5, G, G1, 2, 3, 4, 5, and/or 6, H, H1, 2, 3, 4, 5, and/or 6, I, I1, 2, 3, 4, and/or 5, J, J1, 2, 3, 4, and/or 5, K, K1, 2, 3, 4, 5, and/or 6.

FOURTEENTH THROUGH TWENTY-FOURTH SPECIFICATIONS

FAILING TO MAINTAIN ACCURATE RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) (McKinney Supp. 1995) in that he failed to maintain a record for each patient which accurately reflects his evaluation and treatment of the patient, as alleged in the facts of:

14. Paragraph A, A1, 2, 3, 4, 5, 6, 7, and/or 8.
15. Paragraph B, B1, 2, 3, 4, 5, 6, 7, and/or 8.
16. Paragraph C, C1, 2, 3, 4, 5, 6, 7, and/or 8.
17. Paragraph D, D1, 2, 3, 4, 5, 6, 7, and/or 8.
18. Paragraph E, E1, 2, 3, 4, 5, 6, and/or 7.
19. Paragraph F, F1, 2, 3, 4, and/or 5.
20. Paragraph G, G1, 2, 3, 4, 5, and/or 6.
21. Paragraph H, H1, 2, 3, 4, 5, and/or 6.
22. Paragraph I, I1, 2, 3, 4, and/or 5.

23. Paragraph J, J1, 2, 3, 4, and/or 5.
24. Paragraph K, K1, 2, 3, 4, 5, and/or 6.

TWENTY-FIFTH AND TWENTY-SIXTH SPECIFICATIONS
PERFORMING A PROCEDURE NOT DULY AUTHORIZED

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(26) (McKinney Supp. 1995) by performing professional services which had not been duly authorized by the patient, as alleged in the facts of:

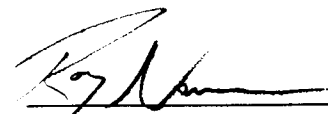
25. Paragraph B and B4.
26. Paragraph C and C4.

TWENTY-SEVENTH THROUGH TWENTY-NINTH SPECIFICATION
**WILLFUL OR GROSSLY NEGLIGENT FAILURE TO COMPLY WITH
STATE LAW GOVERNING THE PRACTICE OF MEDICINE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16) (McKinney Supp. 1995) by engaging in willful or grossly negligent failure to comply with substantial provisions of state law governing the practice of medicine, to wit, N.Y. Public Health Law § 4164(1), as alleged in the facts of:

27. Paragraph A, A4, 6, and/or 8
28. Paragraph E and/or E3.
29. Paragraph H and/or H2.

DATED: August 15, 1995
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct