



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

January 16, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

David Schwartz, M.D.  
5252 Dawes Avenue  
Alexander, Virginia 22311

David Schwartz, M.D.  
11437 Hollow Timber Court  
Reston, Virginia 20194

David Schwartz, M.D.  
412 First Street, South East  
Washington, DC 20003

**RE: In the Matter of David Schwartz, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-33) 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 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.

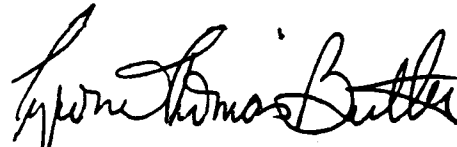
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
DAVID T. SCHWARTZ, M.D.**

**DETERMINATION**

**AND**

**ORDER**

**BPMC #02-33**

A Statement of Charges dated July 20, 2001, and a "Commissioner's Order and Notice of Hearing" dated July 24, 2001, were served upon the Respondent, **DAVID T. SCHWARTZ, M.D.** **DATTA G. WAGLE, M.D.**, Chairperson, **ARSENIO G. AGOPOVICH, M.D.** and **WILLIAM W. WALENCE, PH.D.**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on December 20, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared pro se.

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 in part pursuant to Public Health Law Section 230(10)(p). This 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 Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (3), (4), (5), (6) and (32). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

This hearing was also scheduled pursuant to Public Health Law §230(12)(b), which requires that a hearing be scheduled to review the circumstances underlying an Order of the Commissioner that a licensee refrain from the practice of medicine in New York, based upon a felony conviction or a finding (actual or equivalent) by the disciplinary body of another state that the practice of medicine by the licensee constitutes an imminent danger to the health of its people.

## WITNESSES

For the Petitioner:	None
For the Respondent:	Respondent

## 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 unless otherwise specified.

1. **DAVID T. SCHWARTZ, M.D.**, the Respondent, was authorized to practice medicine in New York State on September 22, 1964, by the issuance of a license by the New York State Education Department (Ex. 4).
2. On November 22, 2000, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine (hereinafter "Virginia Board"), by an Order of Summary Suspension (hereinafter "Virginia Order 1"), summarily suspended Respondent's license to practice medicine pending a formal hearing in the matter. The grounds for

Virginia Order 1 were that Respondent's continued practice of medicine constituted a "substantial danger" to the public health and safety, based upon findings of "gross ignorance or carelessness" in his treatment of one patient, and based upon extensive findings of substandard care made by an Informal Conference Committee of the Board with regard to 12 other patients (included in Ex. 5).

3. On March 9, 2001, the Virginia Board, by a Consent Order (hereinafter "Virginia Order 2"), accepted the Surrender for Indefinite Suspension of Respondent's license to practice medicine for not less than one (1) year and assessed a \$14,000.00 penalty, based on its conclusion that Respondent:

- had significant deficiencies in his area of specialty with regard to judgement involving patient selection, including adequate preoperative assessment of whether to perform surgery, particularly high-risk surgeries and organizing data properly in order to appropriately exercise clinical judgement;
- did not appreciate surgical complications and risks in some of the high-risk surgeries he performed, failed to use appropriate surgical techniques in some circumstances, and did not have sufficient experience in the procedures to properly minimize the consequences of the complications that did occur;
- had deficiencies in documenting patient charts, including using anatomically inaccurate descriptions in his notes;
- had been found by the Colorado Personalized Education for Physicians program (CPEP) to have deficiencies in his judgement with regard to case selection (taking on varied matters of low volume, including several high-risk procedures which because, inter alia, of the low volume are beyond his area of competence); in organizing data in order to appropriately exercise clinical judgement as to when to perform surgery and in managing postoperative complications; and in the manner in which he documented the treatment of patients;
- was the subject of hospital review actions from 1989-2000 that led to the restriction or denial of privileges at hospitals, based upon identified deficiencies in the care rendered to patients;

4. On April 9, 2001, the District of Columbia Department of Health, (hereinafter "D.C. Board"), by a Notice of Summary Action to Suspend License, summarily suspended Respondent's license to practice medicine, based upon the actions of the Virginia Board described in fact-findings 2-3, above.

### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the Virginia and D.C. Boards' disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(3) (negligence on more than one occasion);
- New York Education Law §6530(4) (gross negligence);
- New York Education Law §6530(5) (incompetence on more than one occasion);
- New York Education Law §6530(6) (gross incompetence); and
- New York Education Law §6530(32) (inadequate recordkeeping).

The Hearing Committee finds no reason to recommend vacation of the Commissioner's Order prohibiting Respondent from practicing medicine in New York State.

### **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 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.

**VOTE: SUSTAINED (3-0)**

#### **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had 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 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 record in this case indicates that Respondent had his medical license summarily suspended by the Virginia Board pending a hearing on the grounds that his continued practice of medicine constituted a "substantial danger" to the public health and safety, based upon findings of "gross ignorance or carelessness" in his treatment of one patient, and based upon extensive findings of substandard care made by an Informal Conference Committee of the Board with regard to 12 other patients.

Subsequently, Respondent entered into a consent order wherein he agreed to an indefinite (minimum one-year) suspension of his Virginia license and the imposition of a \$14,000 penalty based upon findings that he provided substandard care to 14 named patients. The Consent Order details a startling array of serious errors made by Respondent in the case management and treatment (usually surgical) of these patients,

and specifies a number of areas in which Respondent's practices were deficient (see fact-finding #3, above). The D.C. Board's summary suspension of Respondent's license was based upon the Virginia actions.

The Hearing Committee determines that Respondent's continued ability to practice medicine in New York State would present an imminent danger to the residents of New York State. Therefore, no reason can be found to recommend vacation of the Commissioner's Order prohibiting Respondent from practicing medicine in New York State.

Furthermore, the Hearing Committee concludes that the only penalty that will acceptably protect the Respondents of New York State from repetition of the serious types of errors Respondent made in his handling of cases in Virginia is revocation of his New York medical license. The hearing committee is of the opinion that Respondent does not appreciate the seriousness of these errors, as evidenced by his attempts to minimize them at the hearing (Respondent's testimony and Ex's B-D, with cover letter), and the Hearing Committee is not convinced that he is capable of rehabilitation or that he can be trusted to comply with any limitations on his license or other terms and conditions that might be set by this Hearing Committee.

In this regard, it is noted that there is evidence, provided to the Hearing Committee after guilt on the instant charges was adjudicated, that Respondent pled guilty to felony income tax evasion in 1982 and was sentenced to three years imprisonment (all except six months of which was suspended), and that he had his medical license summarily revoked in Virginia as a result (Ex. 8; this document also contains references by the Virginia Board to other dishonest acts committed by Respondent that were disclosed by a hospital at which he worked). In addition, the instant hearing had to be adjourned while Respondent completed a four month prison sentence resulting from his conviction on four counts of

practicing on a suspended medical license (see the letter in the record from Respondent's attorney dated August 15, 2001). The conclusion is difficult to avoid that Respondent feels he is above the law and not worthy of trust.

The Hearing Committee concludes that nothing in the evidence presented at the hearing, including the evidence presented by Respondent, justifies the conclusion that he should receive a sanction of less than revocation of his medical license in New York State. The fact that this penalty is somewhat more severe than the indefinite suspension imposed by the state of Virginia is of no particular import. Revocation of Respondent's New York license is clearly and unequivocally justified.

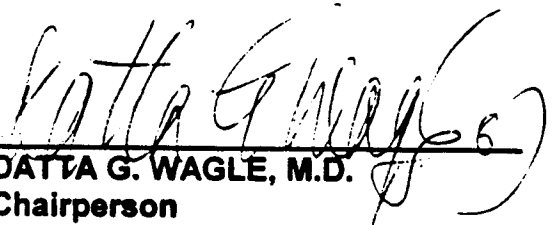
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The New York medical license of **DAVID T. SCHWARTZ, M.D.** should be **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent attorney by personal service or by certified or registered mail.

**DATED: Williamsville, New York**  
1/14/ 2002

  
**DATTA G. WAGLE, M.D.**  
Chairperson

**ARSENIO G. AGOPOVICH**  
**WILLIAM W. WALENCE, PH.D.**

# APPENDIX 1

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

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IN THE MATTER  
OF  
DAVID SCHWARTZ, M.D.  
CO-01-02-0644-A

COMMISSIONER'S  
ORDER  
AND  
NOTICE OF  
HEARING

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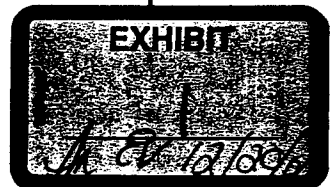
TO: DAVID SCHWARTZ, M.D.  
11437 Hollow Timber Court  
Reston, VA 20194

DAVID SCHWARTZ, M.D.  
5252 Dawes Avenue  
Alexander, VA 22311

DAVID SCHWARTZ, M.D.  
412 First Street, South East  
Washington, DC 20003

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, 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 duly authorized professional disciplinary agencies of other jurisdictions, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine and the Government of the District of Columbia, Department of Health, have made findings substantially equivalent to a finding that the practice of medicine by DAVID SCHWARTZ, M.D., in those jurisdictions constitutes an imminent danger to the health of their people, and DAVID SCHWARTZ, M.D., has been disciplined by a duly authorized professional disciplinary agency of another jurisdiction, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine, for acts which if committed in this state would have constituted the basis for summary action, and that the continued practice of medicine in the State of New York by DAVID

EXHIBIT



SCHWARTZ, M.D., Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately DAVID SCHWARTZ, 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. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 22<sup>nd</sup> day of August, 2001 at 10:00 am in the forenoon at Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 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 her 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 Section

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, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, New York 12180 (518-402-0751), 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 that 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 MAY BE FINED OR SUBJECT TO OTHER  
SANCTIONS SET FORTH IN NEW YORK PUBLIC  
HEALTH LAW SECTION 230-A. YOU ARE  
URGED TO OBTAIN AN ATTORNEY FOR THIS  
MATTER.**



DATED: Albany, New York

*July 24*, 2001



ANTONIA C. NOVELLO, M.D. M.P.H, Dr. P.H.,  
Commissioner

Inquires should be addressed to:

Robert Bogan  
Associate Counsel  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0828

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

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IN THE MATTER  
OF  
DAVID SCHWARTZ, M.D.  
CO-01-02-0644-A

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STATEMENT  
OF  
CHARGES

DAVID SCHWARTZ, M.D., the Respondent, was authorized to practice medicine in New York state on February 10, 1965, by the issuance of license number 093013 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about November 22, 2000, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine (hereinafter "Virginia Board"), by an Order of Summary Suspension (hereinafter "Virginia Order 1"), Summarily Suspended Respondent's license to practice medicine pending a formal hearing in the matter, based on gross negligence or carelessness in the treatment of a patient and substandard treatment of twelve (12) patients.

B. On or about March 9, 2001, the Virginia Board, by a Consent Order (hereinafter "Virginia Order 2"), accepted the Surrender for Indefinite Suspension of Respondent's license to practice medicine for not less than one (1) year and assessed a \$14,000.00 penalty, based on gross negligence, negligence on more than one occasion, gross incompetence, incompetence on more than one occasion, and inadequate recordkeeping.

C. On or about April 9, 2001, the District of Columbia, Department of Health, (hereinafter "DC Board"), by a Notice of Summary Action to Suspend License. Summarily suspended Respondent's license to practice medicine, based on the actions described in Paragraphs A and B above.

D. 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);
4. New York Education Law §6530(6) (gross incompetence); and/or
5. New York Education Law §6530(32) (inadequate recordkeeping).

E. The conduct resulting in the DC Board disciplinary action against the Respondent would constitute misconduct under the laws of the New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(9)(b) (by having 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 this state, constitute professional misconduct under the laws of this state); and/or

2. New York Education Law §6530(9)(d) (by having had his license to practice medicine suspended or having 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 suspension or other disciplinary action would, if committed in this state, constitute professional misconduct under the laws of this state).

## SPECIFICATIONS

### FIRST AND SECOND SPECIFICATIONS

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

1. The facts in Paragraphs A, B, and/or D.
2. The facts in Paragraphs A, B, C, D, and/or E.

### THIRD AND FOURTH SPECIFICATIONS

Respondent violated New York State Education Law §6530 (9)(d) by had his license to practice medicine suspended or having 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 suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

3. The facts in Paragraphs A, B, and/or D.
4. The facts in Paragraphs A, B, C, D, and/or E.

DATED: *July 20*, 2001  
Albany, New York



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