



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

PUBLIC

October 7, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Lucien J. Armand, M.D.
4100 South Hospital Drive
Suite 108
Plantation, Florida 33317

RE: In the Matter of Lucien J. Armand, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-310) 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

IN THE MATTER
OF
LUCIEN J. ARMAND, M.D.

DETERMINATION

AND

ORDER

BPMC #02-310

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated August 26, 2002, were served upon the Respondent, **LUCIEN J. ARMAND, M.D.** **MICHAEL R. GOLDING, M.D.**, Chairperson, **MARGERY W. SMITH, M.D.** and **NANCY J. MACINTYRE, R.N., 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 September 20, 2002, 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.**, of Counsel. The Respondent did not appear at the hearing in person or by an attorney.

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 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.

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. **LUCIEN J. ARMAND, M.D.**, the Respondent, was authorized to practice medicine in New York State on August 6, 1969, by the issuance of license number 104518 by the New York State Education Department (Ex. 4).
2. On March 10, 1989, the State of Florida Board of Medicine (the Florida Board) accepted a Stipulation agreed to the previous day by Respondent, wherein Respondent agreed to accept disciplinary action to resolve an Administrative Complaint issued against him by the State Department of Professional Regulation on October 3, 1998. Although some of the allegations in the Complaint were dropped by the Board, Respondent stipulated that he neither admitted nor denied a series of other allegations. The allegations not dropped by the board included conclusions that Respondent had violated Florida law by failing to keep written medical records justifying the course of treatment of two patients, including, but not limited to, patient histories, examination results and test results. The discipline Respondent agreed to accept included a \$1,500 fine, a reprimand, and 30 hours of Continuing Medical Education (CME) in vascular surgery, risk management and record keeping (Ex. 5).
3. On June 29, 1998, Respondent entered into a Consent Agreement with the Florida Agency for Health Care Administration wherein Respondent admitted to the facts in an Administrative Complaint filed on May 27, 1997 and admitted that, if proven, these facts would constitute violations of law as set forth in the Complaint. The essence of the allegations in this Complaint was that Respondent had committed negligence by removing a Jackson-Pratt drain from a patient who underwent gallbladder surgery while the drain was still leaking bile, which allowed the slow leakage of bile to evolve into peritonitis. In the Consent Agreement, Respondent agreed to accept the imposition of a

\$3,500 fine, a reprimand, the completion of 20 additional hours of CME in the area of laparoscopic cholecystectomy surgery, and a two year period of probation, which included indirect supervision of his practice by a monitor. On September 8, 1998, the Florida Board accepted the Consent Agreement, subject to an additional requirement that Respondent submit to the University of Florida evaluation program and comply with the recommendation of such evaluation (Ex. 6).

4. On May 1, 2002, the Florida Board accepted the terms of a Consent Agreement entered into between Respondent and the Florida Department of Health on January 28, 2002, wherein Respondent, although neither admitting or denying the allegations of fact contained in an Administrative Complaint dated December 11, 2001, agreed that, if proven, they would constitute violations of Florida Law. The allegations in the Complaint were, in essence, that: Respondent had committed negligence by failing to refer a patient who had undergone breast reduction surgery with complications to a specialist for consultation once the breast became infected, by failing to adequately diagnose the patient's post-operative problem, and by failing to properly treat her post-operative infection; and that Respondent had failed to keep medical records that justified his course of treatment for the patient, including failing to document the patient's specific complaints, the need for treatment, the treatment offered, the post operative management, the justification for continued treatment by him once the breast became infected, and/or records of informed consents for procedures performed on various dates. As a result of his acceptance of the Consent Agreement, Respondent accepted a reprimand, a restriction on his practice to below Level II "office surgery" unless and until he demonstrated successful completion of, and complied with all recommendations resulting from, the University of Florida Comprehensive Assessment

and Remedial Education Service (C.A.R.E.S.) Program course, a two year period of probation, including indirect supervision by a monitoring physician, and a requirement that he complete a recordkeeping course (Ex. 7).

5. On August 27, 2002, Mr. Bogan sent to Respondent, by regular mail and Certified Mail, Return Receipt Requested, a copy of the Notice of Hearing, Statement of Charges and a copy of the Health Department Regulations (Ex's. 1, 3). The return receipt was signed by Respondent's office manager. On August 28, 2002, Respondent was personally served, by service to his office manager, with an additional copy of the same documents (Ex. 2). The Notice of Referral Proceeding included notification that Respondent was required to file a written answer to the Statement of Charges with the Bureau of Adjudication no later than ten days prior to the hearing, or any allegations not so answered would be deemed admitted. Respondent was also advised in this notice that the proceedings would be held whether or not he appeared, that requests for adjournments must be made in writing to the Bureau of Adjudication at least five days before the scheduled hearing date and that adjournments are not routinely granted.
6. On September 19, 2002, Mr. Bogan spoke with Respondent by telephone. Respondent acknowledged receiving the aforementioned documents and indicated that he could not come to the hearing because he had too many patients to care for. He did fax Mr. Bogan a copy of a letter previously sent to the Department wherein he stated that the complications the patient experienced as a result of the breast reduction surgery referred to in fact-finding #4, above were well known, although rare, and that the financial limitations of his insurance forced him to enter into the final order. Respondent did not address the record keeping findings in this order or the findings in the other

Florida orders, did not file an answer to the charges, did not request an adjournment, and did not attend the hearing.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Florida Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(b) and (d), in that the conduct described would have constituted misconduct, had it been committed in New York, under:

- New York Education Law §6530(3) (negligence on more than one occasion);
- New York Education Law §6530(32) (failure to maintain adequate patient records);

The Florida Orders contain, however, no findings of incompetence or gross negligence, as charged by the department.

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 has had disciplinary actions taken against him as a result of his assent to Consent Agreements or stipulations with the Florida Board on three occasions, as set forth above, involving allegations of negligence in the provision of patient care and inadequate record keeping. The conduct, had it occurred in New York would have constituted misconduct by reason of negligence on more than one occasion and inadequate record keeping, and Respondent, therefore, committed misconduct in this state under New York Education Law §6530(9)(b) and (d).

Accordingly, the only issue remaining to be considered is the penalty to be imposed for Respondent's misconduct. In this regard, the Hearing Committee found it disturbing that Respondent apparently did not feel this matter to be sufficiently important for him to appear at the hearing, to file an answer to any of the charges (his September 19, 2002 fax to Mr. Bogan did not address any of the findings in the Florida Orders) or to present any evidence in mitigation of possible sanctions that might be imposed. The record contains, therefore, no evidence that Respondent has changed any of the practices that led to the Florida findings, no evidence as to the results of any of the programs or evaluations he was required to complete as a result of the Florida Orders, no evidence as to the results of the monitoring required by the Florida Orders, no evidence of remorse, no evidence that Respondent could be expected to practice safely and under the law, were he to relocate to

New York, and no other evidence that could lead to a conclusion that the Hearing Committee should be lenient in assessing a sanction in this matter.

Unlike the Florida Board, the New York Board is not in a position to effectively monitor Respondent's future performance. It is a matter of mere conjecture as to whether Respondent could be expected in the future to practice safely and within applicable medical and legal standards. The Hearing Committee feels that the sanction of revocation of Respondent's New York license is the appropriate penalty to be imposed, especially in light of Respondent's apparent disinterest in contesting the instant case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **LUCIEN J. ARMAND, M.D.** is hereby **REVOKED**.

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

DATED: New York, New York

30 SEPT, 2002



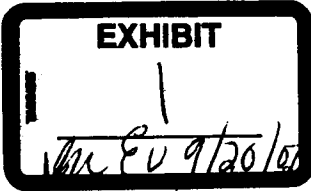
MICHAEL R. GOLDING, M.D.

Chairperson

MARGERY W. SMITH, M.D.

NANCY J. MACINTYRE, R.N., Ph.D.

APPENDIX 1



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

IN THE MATTER
OF
LUCIEN J. ARMAND, M.D.
CO-02-06-3081-A

NOTICE OF
REFERRAL
PROCEEDING

TO: LUCIEN J. ARMAND, M.D.
4100 South Hospital Drive, Suite 108
Plantation, FL 33317

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 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 September 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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. You may produce evidence or sworn testimony on your behalf. Such evidence 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, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 10, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before September 10, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. 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 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 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

August 26, 2002



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
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

IN THE MATTER
OF
LUCIEN J. ARMAND, M.D.
CO-02-06-3081-A

STATEMENT
OF
CHARGES

LUCIEN J. ARMAND, M.D., the Respondent, was authorized to practice medicine in New York state on August 23, 1964, by the issuance of license number 104518 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 7, 1989, the State Board of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order I"), reprimanded Respondent, required him to complete thirty (30) hours of CME with at least fifteen (15) hours in general vascular surgery and the remaining hours in risk management within the surgical practice, including proper medical record keeping, and imposed a \$1,500.00 administrative fine, based on failing to keep written medical records to justify his course of treatment.

B. On or about September 8, 1998, the State Board of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order II"), reprimanded Respondent, imposed a \$3,500.00 fine, required him to attend twenty (20) hours CME in the area of General Surgery in performing Laparoscopic Cholecystectomy Surgery, placed him on indirect probation for two (2) years, and permitted him to practice only under the indirect supervision of a Board approved physician while on indirect probation, based on failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions.

C. On or about May 1, 2002, the State Board of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order III"), reprimanded

Respondent, required him to complete the University of Florida Comprehensive Assessment and Remedial Education Service course and a record keeping course, imposed one hundred (100) hours community service, required him to pay \$3,278.22 administrative costs, placed his license on two (2) years indirect probation, permitted him to practice only under the indirect supervision of a Board approved physician while on indirect probation, and restricted him from performing Level II or above "Office Surgery", based on failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions.

D. The conduct resulting in the Florida 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) (failure to keep accurate records).

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, in that Petitioner charges:


1. The facts in Paragraphs B and/or D.

SECOND THROUGH FOURTH SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(d) by having had 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/or D;
3. The facts in Paragraphs B and/or D; and/or
4. The facts in Paragraphs C and/or D.

DATED: *August 21*, 2002
Albany, New York


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