



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Karen Schimke  
*Executive Deputy Commissioner*

November 14, 1996

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Frederick Zimmer, Esq.  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Empire State Plaza  
Tower Bldg. - Room 2438  
Albany, New York 12237

EFFECTIVE DATE NOVEMBER 21, 1996

Ira B. Goldberg, M.D.  
Corbin Medical Associates  
1007 18th Street  
P.O. Box 850  
Corbin, Kentucky 40702-0850

### **RE: In the Matter of Ira B. Goldberg, M.D.**

Dear Mr. Zimmer and Dr. Goldberg:

Enclosed please find the Determination and Order (No. BPMC-96-268) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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.

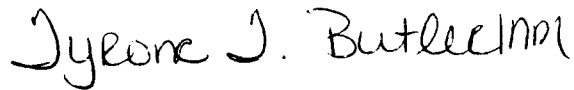
The notice of review served on the Administrative Review Board should be forwarded to:

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 that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

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

**COPY**

-----X  
IN THE MATTER :  
OF :  
IRA B. GOLDBERG, M.D. :  
-----X

DETERMINATION  
AND  
ORDER

BPMC-96-268

A Notice of Referral Proceeding and Statement of Charges, both dated September 17, 1996, were served upon the Respondent, Ira B. Goldberg, M.D. **STEPHEN W. HORNYAK, M.D. (Chair)**, **LYON M. GREENBERG, M.D.**, and **D. MARISSA FINN**, 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 Frederick Zimmer, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. A hearing was held on October 16, 1996. 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)(d) [having disciplinary action taken by the duly authorized professional disciplinary agency of another state]. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### 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. Ira B. Goldberg, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on October 16, 1969 by the issuance of license number 104926 by the New York State Education Department. (Pet. Ex. #3).

2. By an Agreed Order, dated January 19, 1996, Respondent and the State Board of Medical Licensure of the Commonwealth of Kentucky (hereinafter the "Kentucky Board") agreed that Respondent would immediately surrender his Drug Enforcement Administration ("DEA") permit, attend the next University of Kentucky mini-residency course, and that a violation of these conditions would be grounds for the Kentucky Board to revoke or suspend his medical license. (Pet. Ex. #4).

3. The conduct which resulted in the Kentucky Board's disciplinary action against Respondent included, among other things, Respondent's failure to meet acceptable standards of medical care. Respondent treated patients F.M., W.C., M.B., J.P., J.H. and or L.H. with controlled substances including Tylenol #3, Valium and/or Xanax without adequate medical indication and/or without adequately attempting alternate medical treatments. (Pet. Ex. #4).

#### **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 Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was disciplined by the Kentucky Board for his inappropriate treatment of six patients using controlled substances. The Committee further concluded that Respondent's conduct, if committed within New York State, would constitute professional misconduct in violation of Education Law §6530(3) [practicing the profession with negligence on more than one occasion]. As a result, the Committee voted to sustain the specification of professional misconduct set forth in the Statement of Charges.

#### 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 suspended for a period of three (3) years. The final year of the suspension shall be stayed. Respondent shall then be placed on probation for a period of three years. The period of probation shall be tolled until such time as Respondent shall seek to return to the active practice of medicine in New York State. Respondent shall be required to notify the Director of the Office of Professional Medical Conduct, in writing, ninety (90) days before returning to the practice of medicine in this state. During the period of probation, Respondent shall be monitored under terms determined by the Director of the Office of Professional Medical Conduct in accordance with Public Health Law

§230(18)(a). 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 Hearing Committee considered the relatively low level of sanction imposed by the Kentucky Board for the underlying conduct. Nevertheless, the Committee has an independent responsibility to determine the appropriate sanction to be imposed upon Respondent's New York medical license. The Committee considers Respondent's inappropriate prescribing of controlled drugs to represent a serious deviation from accepted standards of practice. The Committee also took notice of the fact that Respondent has previously been disciplined by both the Kentucky Board and the State Board for Professional Medical Conduct. As a result, the Hearing Committee unanimously determined that a significant sanction should be imposed upon Respondent. Under the totality of the circumstances, the Committee determined that a three year suspension, with the final year stayed, and a three year term of probation, provides a more appropriate sanction than that imposed by the Kentucky Board.



ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is SUSPENDED for a period of THREE (3) YEARS. The third year of the suspension shall be STAYED, and Respondent placed on probation for a period of three years. The period of probation shall be tolled until such time as Respondent shall seek to return to the active practice of medicine in New York State. Respondent shall be required to notify the Director of the Office of Professional Medical Conduct, in writing, ninety (90) days before returning to the practice of medicine in this state. During the period of probation, Respondent shall be monitored under terms determined by the Director of the Office of Professional Medical Conduct in accordance with Public Health Law §230(18)(a);

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  
11/11, 1996

  
STEPHEN W. HORNYAK, M.D. (CHAIR)

LYON M. GREENBERG, M.D.  
D. MARISSA FINN



TO: Frederick Zimmer, Esq.  
Assistant Counsel  
New York State Department of Health  
Tower Building - Room 2429  
Albany, New York 12237

Ira B. Goldberg, M.D.  
Corbin Medical Associates  
1007 18th Street  
P.O. Box 850  
Corbin, Kentucky 40702-0850

APPENDIX I

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



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IN THE MATTER : NOTICE OF  
OF : REFERRAL  
IRA B. GOLDBERG, M.D. : PROCEEDING

-----X

TO: IRA B. GOLDBERG, M.D.  
Corbin Med. Assoc.  
1007-18th St.  
P.O. Box 850  
Corbin, Kentucky 40702-0850

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 16th day of October, 1996 at 10:00 in the forenoon of that day at the Legislative Office Building, 7th Floor - Room 711A, Empire State Plaza, Albany, New York 12248.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. 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 which 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 9, 1996.

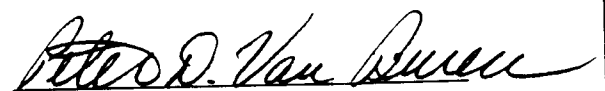
You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before October 9, 1996 except that the answer may be filed on or before October 7, 1996 and a copy of the respective papers must be served on the above dates 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  
*September 17, 1996*



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

Inquiries should be addressed to:

Frederick Zimmer  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2429  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282



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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
IRA B. GOLDBERG, M.D. : CHARGES

-----X

IRA B. GOLDBERG, M.D., the Respondent, was authorized to practice medicine in New York State on October 16, 1969 by the issuance of license number 104926 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. By an Agreed Order, dated January 19, 1996, Respondent and the State Board of Medical Licensure of the Commonwealth of Kentucky (the "Kentucky Board") agreed that he would immediately surrender his Drug Enforcement Administration Permit, attend the next University of Kentucky mini-residency course and that a violation of these conditions would be grounds for the Kentucky Board to revoke or suspend his medical license.

B. The conduct which resulted in the Kentucky Board's disciplinary action against Respondent included, among other things, Respondent's failure to meet acceptable standards of medical care, in that he treated patients F.M, W.C, M.B., J.P., J.H. and/or L.H. with controlled substances including Tylenol # 3, Valium and/or Xanax without adequate medical indication and/or without adequately attempting alternative medical treatments.


C. The conduct resulting in the Kentucky Board's disciplinary action against Respondent would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(3) (McKinney Supp. 1996)-[practicing the profession with negligence on more than one occasion].

SPECIFICATION

Respondent is charged with professional misconduct by reason of his having had disciplinary action taken against him by the 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 violation of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) in that the Petitioner charges:

1. The facts in Paragraphs A, B and C.

DATED: *September 17,* 1996  
Albany, New York

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