



# 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*

November 16, 2001

## **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

Sharif Mahdavian, Esq.  
Friedman & Mahdavian, P.C.  
The Bar Building  
36 West 44<sup>th</sup> Street, Suite 1205  
New York, New York 10036

Ronald S. Fleischmann, M.D.  
5909 Luther Lane #1504  
Dallas, Texas 75225

Ronald S. Fleischmann, M.D.  
8117 Preston Road #210  
Dallas, Texas 75225

### **RE: In the Matter of Ronald S. Fleischmann, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-278) 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.

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.

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 fluid and cursive, with a large initial 'T' and 'B'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

**COPY**

**IN THE MATTER**  
**OF**  
**RONALD S. FLEISCHMANN, M.D.**

**DETERMINATION**

**AND**

**ORDER**

BPMC #01-278

A Notice of Referral Proceeding and Statement of Charges, both dated September 26, 2001, were served upon the Respondent, **RONALD S. FLEISCHMANN, M.D.** **FRED LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **FRANCES TARLTON**, 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 October 26, 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 in person and by **SHARIF MAHDAVIAN, ESQ.**

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), (17), and (20). 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:

Respondent  
Stephen W. Scherffius, M.D.  
Andrea Celenza, Ph.D

## 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. **RONALD S. FLEISCHMANN, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 1, 1970, by the issuance of license number 106367 by the New York State Education Department (Ex. 4).
  
2. On March 30, 2001, the Texas State Board of Medical Examiners (hereinafter "Texas Board"), by an Agreed Order (hereinafter "Texas Order"), restricted Respondent's medical license for three (3) years under terms and conditions (the equivalent of probation), based upon Respondent, a psychiatrist, having engaged in boundary violations with one patient by making inappropriate self-disclosures (Ex. 5).

## HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Texas Board's 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(17) (exercising undue influence on a patient; and
- New York Education Law §6530(20) (moral unfitness)

### 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 New York state.

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

### **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that on March 30, 2001, the Texas Board, by issuance of the Texas Order, restricted Respondent's medical license for three years under terms and conditions (the equivalent of probation), based upon Respondent, a psychiatrist, having engaged in boundary violations with one patient by making inappropriate self-disclosures.

The Hearing Committee determines that the conduct which led to the Texas Order would have, had it been committed in New York, constituted misconduct under the definitions of misconduct cited above. Respondent admitted at the hearing that his inappropriate conduct included revealing his personal and sexual feelings for the patient whose case prompted the Texas inquiry. The Hearing Committee concludes that this behavior was likely to cause harm to the patient and injure the therapeutic relationship between her and Respondent. Therefore, the conduct would have constituted "[n]egligence on more than one occasion" in New York pursuant to New York Education Law §6530(3). The Hearing Committee also concludes that Respondent's behavior would have constituted "[e]xercising undue influence on a patient pursuant to New York Education Law §6530(17), as well as evincing moral unfitness (New York Education Law §6530(20)).

Having so found, the Hearing Committee addresses itself to the remaining issue, the penalty to be imposed in New York State. The Hearing Committee was impressed with Respondent's testimony regarding his recognition of the problems that led to his conduct and remorse for their occurrence, and with his extensive efforts (initiated by himself before

he was cited for any violations) to ensure, through therapy, monitoring and education, that behavior of the sort that led to the Texas Order is never repeated. The Hearing Committee's assessment is consistent with the assessments of professionals who have worked with Respondent that, as a result of the extensive efforts he has made and the high level of insight he has obtained, he can safely practice his profession without risk of engaging in further boundary violation behavior. This evidence included the telephonic testimony of, and documentation prepared by, Andrea Celenza, Ph.D., a specialist in treatment of practitioners with boundary violation problems who monitors Respondent's practice for the Dallas Psychoanalytic Institute (Ex's. H and N); and the telephonic testimony of, and documentation from, Stephen W. Scherffius, M.D., a psychiatrist, psychoanalyst and psychotherapist who began treating Respondent for the problems that led to the boundary violations before the medical-legal issues surrounding them erupted (Ex's J and L).

The Hearing Committee's primary objective in meting out a penalty in this case is to deter Respondent from leaving Texas before he has completed his period of restriction (probation) with the Texas Board, which itself requires compliance with probationary terms set by the Dallas Psychoanalytic Institute. As of the date of the hearing, Respondent's Texas restrictions were due to expire on March 24, 2004, or sooner (with a one year minimum) if approved by the Board upon petition by Respondent.

Accordingly, the Hearing Committee concludes that a limitation on Respondent's ability to register to practice in New York (Respondent has not registered in New York since his license was issued in 1970) should be imposed pursuant to Public Health Law §230-a(6). This limitation will be lifted upon verification from the Texas Board that Respondent has been discharged from the probation (restrictions on his license) imposed by the Texas



Order (OPMC should provide appropriate notification of this determination to the New York State Education Department, along with a copy of this decision).

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. A **RESTRICTION** is hereby imposed limiting Respondent's ability to register to practice medicine in New York State until after he has been restored to unrestricted practice by the Texas Board of Medical Examiners.

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: Middletown, New York**

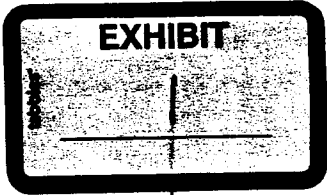
*Nov. 14, 2001*

  
**FRED LEVINSON, M.D.**  
Chairperson

**ERNST A. KOPP, M.D.**  
**FRANCES TARLTON**

# APPENDIX 1

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



**IN THE MATTER**  
**OF**  
**RONALD S. FLEISCHMANN, M.D.**  
**CO-01-05-2296-A**

**NOTICE OF**  
**REFERRAL**  
**PROCEEDING**

**TO:** RONALD S. FLEISCHMANN, M.D.  
5909 Luther Lane # 1504  
Dallas, TX 75225

RONALD S. FLEISCHMANN, M.D.  
8117 Preston Road # 210  
Dallas, TX 75225

**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 26<sup>th</sup> day of October 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

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 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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, 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 16, 2001.

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 October 16, 2001, 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

*September 26*, 2001



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries 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

RONALD S. FLEISCHMANN, M.D.  
CO-01-05-2296-A

STATEMENT

OF

CHARGES

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RONALD S. FLEISCHMAN, M.D., the Respondent, was authorized to practice medicine in New York state on July 1, 1970, by the issuance of license number 106367 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about March 30, 2001, the Texas State Board of Medical Examiners (hereinafter "Texas Board"), by an Agreed Order (hereinafter "Texas Order"), RESTRICTED Respondent's medical license for three (3) years under terms and conditions, based on Respondent, a psychiatrist, engaging in boundary violations with one patient by making inappropriate self-disclosures.

B. The conduct resulting in the Texas Board disciplinary action 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(17) (exercising undue influence on a patient);

and/or

3. New York Education Law §6530(20) (moral unfitness).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having had disciplinary action taken against him 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 and/or B.

**SECOND SPECIFICATION**

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

2. The facts in Paragraphs A and/or B.

DATED: *Sept 26*, 2001  
Albany, New York

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