

**DOH STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen  
*Executive Deputy Commissioner*

June 15, 1999

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mark T. Fantauzzi, Esq.  
NYS Department of Health  
Corning Tower – Room 2509  
Empire State Plaza  
Albany, New York 12237

Pietr Hitzig, M.D.  
5228 Soledad Mountain Road  
San Diego, California 92109

**RE: In the Matter of Pietr Hitzig, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.99-127) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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.

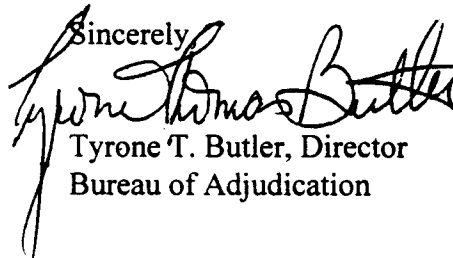
All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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,  
  
Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mla  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
PIETR HITZIG, M.D.**

**DETERMINATION  
AND  
ORDER**

**ORDER #99-127**

A Notice of Referral Proceeding, dated April 1, 1999, Commissioner's Summary Order and Statement of Charges, each dated March 17, 1999 were served upon the Respondent, **PIETR HITZIG, M.D.** **CHARLES J. VACANTI, M.D.**, (Chairperson), **ERNST A. KOPP, M.D.** and **JOHN VERNIEU**, 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. **JEFFREY ARMON**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on April 28, 1999. The Department of Health appeared by **HENRY M. GREENBERG**, General Counsel, by **MARK T. FANTAUZZI**, Esq., of Counsel. The Respondent did not appear and was unrepresented. 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, Respondent was charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as 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. Respondent was authorized to practice medicine in New York State on August 24, 1970, by the issuance of license number 106976 by the New York State Education Department. (Ex. 3)

2. By an Order dated December 12, 1998, the Maryland Board of Physician Quality Assurance summarily suspended Respondent's license to practice medicine in that state. The Order was based on findings by the Maryland Board that Respondent had engaged in immoral and unprofessional conduct, including sexual contact with patients, profound and egregious boundary violations and numerous improprieties with respect to the prescribing and dispensing of drugs, including controlled substances,

and other improper conduct. (Ex. 5)

3. Respondent submitted a notarized statement, dated February 1, 1999, to the Maryland Board by which he agreed to permanently surrender his license to practice medicine in Maryland. In the written statement, Respondent admitted to have engaged in unprofessional conduct. (Ex. 4)

4. The Acting Commissioner of the New York Department of Health issued a Summary Order, dated March 17, 1999, by which Respondent was ordered to immediately cease practicing medicine in New York. This Order was based on Respondent having been disciplined by a duly authorized professional disciplinary agency of another jurisdiction for conduct which, had it occurred in New York, would have constituted the basis for summary action pursuant to New York Public Health Law § 230 (12)(a). (Ex. 2)

5. Respondent was personally served with the Commissioner's Summary Order and related Statement of Charges on March 23, 1999. (Ex.8)

6. Several unsuccessful attempts were made to personally serve Respondent with the Notice of Referral Proceeding and related Statement of Charges. A copy of the Notice and Charges were sent to the Respondent by certified mail on April 1, 1999. (Ex. 12, 13)

#### 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 determined that Respondent had been properly served with the Notice of Referral Proceeding, Commissioner's Summary Order and Statement of Charges based on the Affidavits of Service (Ex.8, 12, 13) and that it had obtained jurisdiction over the Respondent as a result.

The Hearing Committee further determined that the Department had met its burden of proof and concluded that the preponderance of the evidence demonstrated that Respondent had been found guilty of professional misconduct and that the Maryland Board had taken disciplinary action against Respondent's license to practice in that State. The basis for such action was conduct which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law Section 6530(3) and(4); [practice of the profession with negligence on more than one occasion and with gross negligence on a particular occasion]. The Hearing Committee therefore determined to sustain the Specifications set out in the Statement of Charges (Ex.1).

### **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 should be revoked. This decision was made following due consideration of the full spectrum of penalties available pursuant to statute, including license revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Committee concluded that license revocation was the only appropriate penalty based on the serious nature of Respondent's conduct and his admission to such conduct. The acts committed by Respondent so greatly deviated from acceptable standards of practice and were so reprehensible that the Committee wished to include a recommendation that Respondent never be considered for restoration of his license to practice medicine in New York.

**ORDER**

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specifications contained within the Statement of Charges (Ex. 1) are **SUSTAINED**, and;

2. Respondent's license to practice medicine in New York State be, and hereby is, **REVOKED**, and;

3. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**Dated: Albany, New York**

11 June, 1999

  
**CHARLES J. VACANTI, M.D. (Chairperson)**

**ERNST A. KOPP, M.D.  
JOHN VERNIEU**

**TO:**

Mark T. Fantauzzi, Esq.  
Bureau of Professional Medical Conduct  
Division of Legal Affairs  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

Pietr Hitzig, M.D.  
5228 Soledad Mountain Road  
San Diego, California 92109

APPENDIX I



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



-----x

IN THE MATTER : NOTICE OF  
OF : REFERRAL  
PIETR HITZIG, M.D. : PROCEEDING

-----x

TO: PIETR HITZIG, M.D.  
5228 Soledad Mountain Road  
San Diego, California 92109

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 28th day of April, 1999 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 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, 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 April 19, 1999.

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 or 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 April 19, 1999 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  
*April 1*, 1999

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Mark T. Fantauzzi  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2509  
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  
PIETR HITZIG, M.D. : CHARGES

-----X

PIETR HITZIG, M.D., the Respondent, was authorized to practice medicine in New York State on August 24, 1970, by the issuance of license number 106976 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On November 18, 1998, Respondent's license to practice medicine was summarily suspended by the Maryland Board of Physician Quality Assurance. The summary suspension was based upon the Board's investigatory findings which concluded that the Respondent had engaged in immoral and unprofessional conduct including sexual contact with patients, including sexual intercourse, profound and egregious boudary violations and numerous improprieties with respect to the prescribing and other dispensation of drugs, including controlled substances, and other improper conduct. In summarily suspending Respondent's medical license, the Maryland Board concluded that the summary suspension was necessary as the "...public health, safety and welfare imperatively require(d) emergency action...". As noted, the Summary Suspension by the Maryland Board was based upon

investigatory findings, the written exposition of which consumed sixty (60) pages and two hundred and fifty-eight (258) separately numbered paragraphs.

B. On December 16, 1998, after a show cause hearing held within thirty (30) days of the Summary Suspension of Respondent's medical license, and otherwise in accordance with Maryland law, the Maryland Board suspended Respondent's medical license.

C. On February 1, 1999, by written letter to the Chairman of the Maryland Board of Physician Quality Assurance, Respondent permanently surrendered his license to practice medicine in the State of Maryland. On February 3, 1999, the Maryland Board accepted Respondent's surrender. In Respondent's letter of February 1, 1999, by which he surrendered his medical license, Respondent affirmed, admitted, acknowledged, and otherwise agreed as follows:

**" I affirm that the Board's investigation revealed that I engaged in unprofessional conduct, including boundary violations. As set forth in both the Order for Summary Suspension and Charges Under the Maryland Medical Practice Act, the findings of the investigation included sexual contact with patients, including sexual intercourse, and profoundly egregious conduct involving numerous boundary violations. "**

**" I admit that I have engaged in unprofessional conduct including sexual misconduct with my patients. I acknowledge that I misused my position as a physician and betrayed the trust placed in me. I acknowledge that the Office of the Attorney General would prove by clear and convincing evidence at an administrative hearing that I did engage in unprofessional conduct as described above. "**

" I have decided to surrender my license to practice medicine in Maryland to avoid further prosecutorial proceedings of the aforementioned charges and summary suspension. The basis for the summary suspension and the charges against me include the findings of the investigation described above, and as specified in the Order for Summary Suspension and charging documents, and by virtue of this Letter of Surrender, I waive any right to contest those charges and findings. I wish to make clear that I have voluntarily, knowingly and freely chosen to submit this Letter of Surrender to avoid prosecution of the aforementioned charges under the Act and in order to resolve this matter. I understand that by executing this Letter of Surrender, I am waiving any right to contest these findings in a formal evidentiary hearing and waiving all other substantive and procedural protections provided by law, including the right to appeal. I make this decision after consulting with counsel. "

" I agree never to apply for reinstatement of my medical licensure in the State of Maryland. "

Excerpts From Respondent's Letter of Surrender, dated February 1, 1999, accepted by the Maryland Board on February 3, 1999. (Emphasis Added.)

D. The conduct resulting in the institution of disciplinary proceedings against Respondent, the summary suspension of Respondent's medical license, the suspension of Respondent's medical license, and the surrender of Respondent's medical license, would constitute professional misconduct under the laws of New York State including, but not limited to, the following section of New York State law:

1. New York Education Law section 6530(3)-(negligence on more than one occasion);
2. New York Education Law section 6530(4)-(gross negligence);

3. New York Education Law section 6530(5)-(incompetence on more than one occasion);
4. New York Education Law section 6530(6)-(gross incompetence)
5. New York Education Law section 6530(16)-(wilful or grossly negligent failure to follow laws governing the practice of medicine);
6. New York Education Law section 6530(20)-(moral unfitness)

**FIRST SPECIFICATION  
FINDING OF GUILT OF IMPROPER PROFESSIONAL PRACTICE OR  
PROFESSIONAL MISCONDUCT PROFESSIONAL DISCIPLINARY AGENCY OF  
ANOTHER STATE**

Respondent is charged with professional misconduct in violation of Education Law section 6530(9)(b) by reason of his 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 could, if committed in New York State, constitute professional misconduct under the laws of New York State, in that the Petitioner charges:

1. The facts in paragraphs A, B, C, and D.



**SECOND SPECIFICATION  
SURRENDER OF MEDICAL LICENSE AFTER INSTITUTION OF DICIPLINARY  
ACTION BY DICIPLINARY AGENCY OF ANOTHER STATE**

Respondent is charged with professional misconduct in violation of Education Law section 6530(9)(d) by reason of his having surrendered his license to preactice medicine in another state after the institution of diciplinary proceedings by a duly authorized diciplinary agency of another state where the conduct resulting in the surrender of Respondent's license to practice medicine in the other state, 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, C, and D.

**THIRD SPECIFICATION  
DICIPLINARY ACTION TAKEN BY DICIPLINARY AGENCY OF ANOTHER STATE**

Respondent is charged with professional misconduct under New York Education Law section 6530(9)(d) by reason of his having had diciplinary action taken against him by a duly authorized professional diciplinary agency of another state, when the conduct resulting in the diciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petoitioner charges:

1. The facts in paragraphs A, B, C, and D.

March 17, 1999  
Albany, New York

*Peter D. Van Buren*

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