



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

August 6, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hosea E. Brown, M.D.
940 Avenida Olivos
Palm Springs, California 92262

Hosea E. Brown, M.D.
1276 N. Palm Canyon Drive
Suite 110
Palm Springs, California 92262

Carolyn Shearer, Esq.
Bond, Schoeneck & King LLP
111 Washington Avenue
Albany, New York 12210

Robert Bogan, Esq.
Paul Robert Mahar, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Hedley Park Place, 1st Floor
Troy, New York 12180-2299

RE: In the Matter of Hosea E. Brown, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-240) 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.

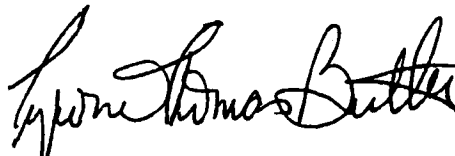
The notice of review served on the Administrative Review Board should be forwarded to:

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 cursive script that reads "Tyrone T. Butler". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

COPY

**IN THE MATTER
OF
HOSEA E. BROWN, M.D.**

DETERMINATION

AND

ORDER

OPMC No. 02-240

A Notice of Referral Proceeding and Statement of Charges, both dated February 8, 2002, were served upon the Respondent, **HOSEA E. BROWN, M.D.** **SHARON KURITZKY, M.D.**, Chairperson, **JOEL H. PAULL, D.D.S., M.D., J.D.** and **MS. DEANNA KRUSENSTJERNA**, 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 July 18, 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.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and by **CAROLYN SHEARER, 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), (11), (16), (25), (32) and (33). 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:	Hosea E. Brown, M.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. **HOSEA E. BROWN, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 5, 1974, by the issuance of license number 120654 by the New York State Education Department (Ex. 4).
2. On August 17, 2001, the Arizona Board of Medical Examiners (hereinafter "Arizona Board"), by a Consent Agreement For a Practice Restriction (hereinafter "Arizona Agreement"), issued Respondent a Letter of Reprimand and placed him on probation for three years with terms and conditions, based upon his having allowed medical assistants to administer immunotherapy without a physician being present to recognize and treat anaphylactic reactions.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Arizona 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); and
- New York Education Law §6530(33) (failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee);

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 On August 17, 2001, the Arizona Board, by approval of the Arizona Agreement, issued Respondent a Letter of Reprimand and placed him on probation for three years with terms and conditions, based upon his having allowed medical assistants to administer immunotherapy without a physician being present to recognize and treat anaphylactic reactions. Respondent's Arizona probation included a prohibition against the administration of immunotherapy in any of his Arizona clinics unless

a licensed physician is present, and an agreement to allow chart reviews by the Arizona Board. The findings to which Respondent admitted in entering into this agreement included a finding that his unlicensed medical assistants [no license is required for medical assistants in Arizona] had been trained to administer immunotherapy to patients "in his absence" and that he was "usually not at the offices" (according to the agreement, Respondent has three allergy clinics in Arizona and several in California, and Respondent admitted at the hearing that he travels between these clinics). In finding this behavior to constitute "unprofessional conduct" (which was defined as "[A]ny conduct or practice which is or might be harmful or dangerous to the health of the patient or the public", the Board concluded that this practice violated a standard of the American Academy of Allergy and Immunology that requires persons administering immunotherapy to do so only under the supervision of an appropriately trained physician who can recognize early symptoms and signs of anaphylaxis and administer emergency medications if necessary.

At the hearing, the gist of Respondent's case was that he did not actually violate the appropriate standards, because his staff never administered medications when he was not on the premises (he testified that he was nearby, in another room), and because his staff was fully trained to handle anaphylaxis. This argument cannot be considered further because it is inconsistent with the findings in the Arizona Order, which is dispositive of all factual and legal issues underlying the determination reached therein. The admissions referred to above clearly imply that medical assistants administered immunotherapy when he was "not at the offices", especially when read in conjunction with the finding that "...Respondent fell below the standard of care in his failure to have a physician present when immunotherapy was administered", and with his agreement with the provision that his conduct constituted unprofessional conduct.

The Hearing Committee determines that Respondent's conduct constituted misconduct under New York Education Law §6530(9)(b) and (d), because the conduct would have constituted misconduct in New York, had it been committed here, under New York Education Law §6530(3) (negligence on more than one occasion) and New York Education Law §6530(33) (failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee).

The Hearing Committee concludes, however, that Respondent's conduct would not have constituted misconduct under the other provisions cited by the Department. The Department conceded at the hearing that Respondent would not have been guilty of violating New York Education Law §6530(11) (permitting an unlicensed person to perform activities requiring a license) because a license is not required in Arizona to administer immunotherapy. For the same reason, Respondent could not have been guilty of violating New York Education Law §6530(25) (delegating professional responsibilities to a person not licensed to perform them). Furthermore, the Arizona Order makes no findings that Respondent's records were inadequate, so the charge that his conduct would have constituted misconduct in New York under New York Education Law §6530(32) (failing to maintain adequate records) is rejected.

And finally, the charge that Respondent's conduct would have violated New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine) is not upheld because it is unclear from the Department's charges and presentation at the hearing what provision(s) of law the Department contends Respondent violated, or in what way his conduct was "willful" or "grossly" negligent. Citation of this

provision was, in any event, duplicative and unnecessary, since Respondent's conduct would have constituted misconduct in this state under the other provisions cited above.

The Arizona Order constitutes evidence, binding on this tribunal, of the commission of professional misconduct in this state. Accordingly, pursuant to Public Health Law §230(10)(p), the only issue remaining to be decided is the penalty, if any, to be imposed by this state. The Hearing Committee concludes that the appropriate penalty is a Censure and Reprimand to be imposed against Respondent's license, and a period of probation, to run concurrently with Respondent's Arizona probation. The Hearing Committee feels that Respondent's conduct does not warrant revocation or suspension of his license, and that a period of probation concurrent with Respondent's Arizona probation will adequately protect the residents of New York, should Respondent come to New York to practice, especially since unlicensed medical personnel cannot, in New York State, administer medications in a physician's office. As far as this record reveals, Respondent has an otherwise unblemished practice record (see the Physician Profile in Ex. 5), and Respondent testified credibly that he has complied with the terms of his Arizona probation by being physically present when immunotherapy is administered. The terms of the New York probation are set forth in the attached Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. A **CENSURE AND REPRIMAND** are hereby issued against the New York medical license of **HOSEA E. BROWN, M.D.**
2. If, at some future date, the Respondent chooses to resume practice in New York, Respondent must provide thirty (30) days prior written notice concerning his intention to the New York State Office of Professional Medical Conduct ("OPMC"). This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility since the date of this hearing.
3. Respondent's medical license is hereby placed on **PROBATION**, to run concurrently with his Arizona probation. Upon verification that Respondent has been released from his Arizona probation, Respondent's New York probation will be terminated. The terms of Respondent's probation are as follows:
 - A). Respondent shall comply with all of the terms of his Arizona probation.
 - B). Respondent shall comply with all applicable laws governing the qualifications of, services legally providable by, and supervision required of, all employees of his medical practice.

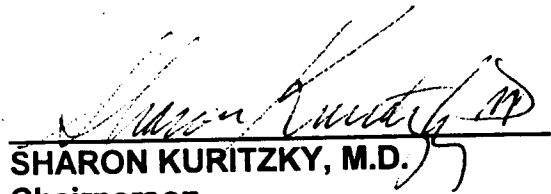
- C). Respondent shall notify in writing any group, clinic or medical facility with whom he becomes affiliated or at which he practices in New York State during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.
- D). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which he is affiliated or at which he practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired physicians. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- E). Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice, professional and residential addresses or telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility during the probationary period, within 30 days of each event;
- F). Should Respondent return to New York to practice, he shall notify the Director of OPMC, in writing, if he ceases to be engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status. Respondent's probation shall be tolled while Respondent is not practicing in New York during such period and shall resume upon his return to practice in New York State.
- G). Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- H). Respondent shall comply with all terms, conditions, and restrictions to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance.
- I). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may

be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.

- J). OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation or any individual provision(s) thereof, if it is satisfied that such relief would not be contrary to the best interests of New York State residents.

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

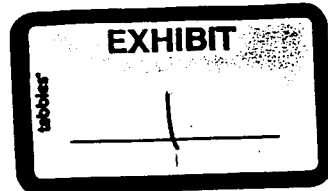
DATED: Amherst, New York
8/5, 2002


SHARON KURITZKY, M.D.
Chairperson

JOEL H. PAULL, D.D.S., M.D., J.D.
MS. DEANNA KRUSENSTJERNA

APPENDIX 1

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



IN THE MATTER
OF
HOSEA E. BROWN, M.D.
CO-01-11-5630-A

NOTICE OF
REFERRAL
PROCEEDING

TO: HOSEA E. BROWN, M.D.
1276 N. Palm Canyon Drive
Suite 110
Palm Springs, CA 92262

HOSEA E. BROWN, M.D.
940 Avenida Olivos
Palm Springs, CA 92262

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 17th day of April 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 April 8, 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 April 8, 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

February 8, 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

Cc: Hosea E. Brown, M.D.
1276 N. Palm Canyon Drive
Suite 110
Palm Springs, CA 92262

Hosea E. Brown, M.D.
940 Avenida Olivos
Palm Springs, CA 92262

Edward Siegler, Esq.
11755 Wilshire Blvd.
Suite 1450
Los Angeles, CA 90025

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

HOSEA E. BROWN, M.D.
CO-01-11-5630-A

STATEMENT

OF

CHARGES

HOSEA E. BROWN, M.D., the Respondent, was authorized to practice medicine in New York state on July 5, 1974, by the issuance of license number 120654 by the New York State Education Department.

FACTUAL ALLEGATIONS

A On or about August 17, 2001, the Arizona Board of Medical Examiners (hereinafter "Arizona Board"), by a Consent Agreement For a Practice Restriction (hereinafter "Arizona Agreement"), issued Respondent a Letter of Reprimand and placed him on probation for three (3) years with terms and conditions, based on failure to keep complete and accurate medical records regarding treatment of patients, allowing unlicensed medical assistants to administer immunotherapy, and failure to be present when immunotherapy was administered by unlicensed medical assistants.

B. The conduct resulting in the Arizona 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(11) (permitting an unlicensed person to perform activities requiring a license);
3. New York Education Law §6530(16) (failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine);
4. New York Education Law §6530(25) (delegating professional responsibilities to a person not licensed to perform them);

5. New York Education Law §6530(32) (failing to maintain accurate records); and/or
6. New York Education Law §6530(9)(33) (failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee).

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 A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having 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 B.

DATED: *Feb. 8*, 2002
Albany, New York

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