



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

May 2, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Leslie Schachar, M.D.
1925 N. Grand
Gainesville, Texas 76240

Leslie Schachar, M.D.
Box 833
Gainesville, Texas 76241

Terrence Sheehan, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

RE: In the Matter of Leslie Schachar, M.D.

Dear Dr. Schachar and Mr. Sheehan:

Enclosed please find the Determination and Order (No. 96-108) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 all action 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.

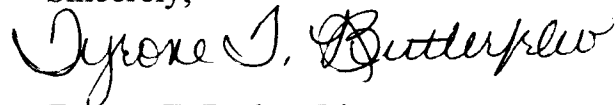
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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, prominent initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

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

**IN THE MATTER
OF
LESLIE SCHACHAR, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-96-108

PETER D. KUEMMEL, R.P.A., (Chair), GERALD WEINBERGER, M.D. and PASCAL J. IMPERATO, M.D. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **TERRENCE SHEEHAN, ESQ.**, Associate Counsel.

Respondent, **LESLIE SCHACHAR, M.D.**, did not appear personally and was not represented by counsel.

A Hearing was held on March 19, 1996. Evidence was received and examined. A Transcript of the proceeding was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§ 230 et seq. of the Public Health Law of the State of New York [hereinafter "P.H.L."])

This case, brought pursuant to P.H.L. § 230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

LESLIE SCHACHAR, M.D., ("**Respondent**") is charged with professional misconduct within the meaning of § 6530(9)(b) of the Education Law of the State of New York ("**Education Law**"), to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and § 6530(9)[b] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to § 6530(9)(b) of the Education Law, must determine: (1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the findings were based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

¹ P.H.L. § 230(10)(p), fifth sentence.

A copy of the 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. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State in 1975 by the issuance of license number 125650 by the New York State Education Department (Petitioner's Exhibit # 1)².

2. The Texas State Board of Medical Examiners ("**Texas Board**") is a state agency charged with regulating the practice of medicine pursuant to the Laws of the State of Texas (Petitioner's Exhibit # 2); (The Texas Medical Practice Act).

3. On June 28, 1995, the Texas Board issued an Agreed Order, suspending Respondent's license to practice medicine in Texas. Said Order stayed the suspension and placed Respondent on probation for 5 years (Petitioner's Exhibit # 2).

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Dr. Schachar (Respondent's Exhibit).

4. The Agreed Order had been signed and accepted by Respondent on June 19, 1995 (Petitioner's Exhibit # 2).

5. The Hearing Committee accepts the Texas Board's findings of fact and conclusions of law and adopts same as part of its own Findings of Fact. The Texas Board findings and conclusions are annexed hereto as appendix II and are incorporated herein (Petitioner's Exhibit # 2).

6. Respondent submitted a letter of explanation, dated March 14, 1996, and letters from: Darryl F. Roberts of the Oklahoma State Senate, dated February 24, 1995; Julia R. Beechinor of the Texas Department of Health, dated April 12, 1995; Tony Cobos of the Texas Board, dated October 30, 1995 (Respondent's Exhibit # A).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the February 2, 1996 Statement of Charges, are SUSTAINED³:

Paragraph A.

(2 - 6)

The Hearing Committee further concludes, based on the above Factual Conclusion, that the SPECIFICATION OF CHARGES is SUSTAINED.

³ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

I **Professional Misconduct under § 6530(9)(b) of the Education Law.**

The Texas State Board of Medical Examiners is a duly authorized professional disciplinary agency. In 1995, said Medical Board issued an Agreed Order, in which Respondent consented to its entry. Respondent failed to adequately maintain complete and accurate records which documented the care and treatment of various of his patients. Respondent failed to obtain adequate preoperative evaluations of various surgical patients of his, prior to performing surgery. Respondent failed to show that the surgical procedures performed were therapeutic, ie: necessary, and appropriate for his patients.

Respondent's acts were violations of various sections of Texas Laws which warranted disciplinary action by the Texas Board. The Hearing Committee finds that Respondent's conduct, under the Agreed Order, if committed in New York State, would constitute professional misconduct under, at least, § 6530(3)⁴, § 6530(26)⁵ and § 6530(32)⁶ of the Education Law. Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(b) of the Education Law.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of improper professional practice by the State of Texas and his conduct in Texas would constitute professional misconduct under the laws of New York State. The Department of Health has met its statutory burden of proof.

⁴ Each of the following is professional misconduct... [P]racticing the profession with negligence on more than one occasion;

⁵ Each of the following is professional misconduct... 26. Performing professional services which have not been duly authorized by the patient or his or her legal representative;

⁶ Each of the following is professional misconduct... 32. Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. § 230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The Committee is bound by the documentary evidence presented by Petitioner and Respondent. The record establishes that Respondent committed unprofessional conduct by failing to maintain patient records, performing "experimental surgery" or unaccepted procedures and failing to document that the surgery was even necessary in violation of the laws of Texas.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented, the negligence, alleged and found by Texas, would have resulted in a finding that Respondent had committed professional misconduct.

The Hearing Committee does consider Respondent's misconduct to be very serious. The Hearing Committee finds the March 14, 1996 letter submitted by Respondent to be disturbing. Respondent, by his letter, indicates to the Hearing Committee that he has no insight that what he has been doing is not acceptable practice. Respondent's failure to personally appear at the March 19, 1996 Hearing and provide any mitigation as to the sanctions to be imposed has also been considered by the Hearing Committee.

With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

All other issues raised have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: New York, New York
April 29, 1996



PETER D. KUEMME, R.P.A., (Chair),

GERALD WEINBERGER, M.D.
PASCAL J. IMPERATO, M.D.

Leslie Schachar, M.D.
1925 N. Grand
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Leslie Schachar, M.D.
Box 833
Gainesville, TX 76241

Terrence Sheehan, Esq.
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001



APPENDIX I

IN THE MATTER
OF
LESLIE SCHACHAR, M.D.

STATEMENT
OF
CHARGES

LESLIE SCHACHAR, M.D., the Respondent, was authorized to practice medicine in New York State on or about 1975, by the issuance of license number 125650 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 19, 1995, a Consent Order was entered by the Texas State Board of Medical Examiners which Order found that Respondent failed to practice ophthalmology in a "manner consistent with public health" in that Respondent, inter alia, performed certain non-indicated, experimental surgical procedures, failed to obtain adequate preoperative evaluations and failed to maintain adequate medical records. This conduct, if committed in New York State would constitute professional misconduct as defined in N.Y. Educ. Law §§6530(3), (4), (26), and (32) (McKinney Supp. 1995).

Based on these findings, the Texas Board suspended Respondent's license for five years, stayed the suspension, and placed him on five years probation, the terms of which require that Respondent obtain institutional review board approval and investigational informed consents from patients prior to performing experimental eye surgeries; that he perform appropriate preoperative evaluations; that he obtain

Department of Health approval for the use of his mobile surgical unit and that he appear before the Texas Board twice a year to insure compliance with the terms of probation.

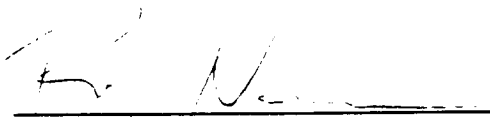
SPECIFICATION OF CHARGES

HAVING BEEN FOUND GUILTY OF MISCONDUCT

Respondent is charged with committing Professional Misconduct as defined by N.Y. Educ. §6530(9)(b)(McKinney Supp. 1995) by having been found guilty of professional misconduct by a duly authorized professional disciplinary body of another state, where the conduct, if committed in New York State, would have constituted professional misconduct under the laws of New York State. Petitioner charges the facts in:

1. Paragraph A.

DATED: February 2, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

4. Respondent has been licensed to practice medicine in Texas for approximately 18 years.

5. Respondent has reported completion of 120 hours of continuing medical education (CME) during the last two years.

6. Respondent failed to provide sufficient evidence that he adequately documented the care and treatment of various patients.

7. Respondent failed to provide sufficient evidence to show that he obtained adequate preoperative evaluations of various surgical patients prior to performing surgery.

8. Respondent failed to provide sufficient evidence that the vitrectomy with scleral tuck procedure that Respondent performs is therapeutic and within the standard of care for macular degeneration disease.

9. Respondent has entered into this Agreed Order pursuant to the provisions of Sections 4.02(h) and (i) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b. Respondent disputes the findings and conclusions of the Board, but consents to their entry for purposes of settling and concluding this matter.

CONCLUSIONS OF LAW

Based on the above findings of fact, the Board concludes the following:

1. Respondent has violated Section 3.08(18) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, which authorizes the Board to take disciplinary action against Respondent based on Respondent's professional failure to practice medicine in an acceptable manner consistent with public health and welfare in that

his medical records did not adequately describe appropriate evaluation and treatment in each patient.

2. Section 4.02(h) of the Act authorizes the Board to resolve and make a disposition of this matter through an agreed order.

3. Section 4.02(i) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Civil Evidence for purposes of civil litigation.

4. Section 4.12 of the Act authorizes the Board to take action in regard to Respondent and Respondent's medical license as set forth below.

5. Section 4.12 of the Act authorizes the Board to restrict the medical license and medical practice of Respondent.

Based on the above findings of fact and conclusions of law, the Board ORDERS that Respondent's Texas medical license is hereby SUSPENDED; however, the suspension is STAYED and Respondent is placed on PROBATION under the following terms and conditions for five (5) years from the date of the signing of this Agreed Order by the presiding officer of the Board:

1. Respondent shall cease performing vitrectomy with scleral tuck surgery for macular degeneration except under protocols as submitted to and approved by an institutional review board and after obtaining appropriate investigational informed consent from the patients.

2. Respondent shall obtain appropriate informed consent on all surgeries performed.

3. To the extent that licensure is required by the Texas Department of Health, Respondent shall obtain the appropriate licensure and maintain licensure requirements for the use of Respondent's mobile surgical unit.

4. Respondent shall obtain and provide the appropriate preoperative medical clinical evaluation on all surgical patients and laboratory tests as may be required for some patients by the standard of care.

5. Respondent shall obtain and document all appropriate ocular examination data prior to any ocular surgical procedure and as a minimum, Respondent shall obtain appropriate work-up of patients prior to cataract and vitrectomy surgery.

6. Respondent shall maintain adequate medical records on all patient office visits, consultations, surgeries performed, drugs provided, and treatment rendered by Respondent. These records will include at a minimum, the patient's name and address, vital signs and statistics, chief complaints, history and physical findings, diagnosis and basis for diagnosis, treatment plan for each patient visit or operative procedure, a notation of all medications prescribed or otherwise provided to the patient including the quantity, dosage, and rationale for providing the medications, and detailed records of all follow-up visits. Each visit shall be noted in the patient record and dated accordingly. Respondent shall make all patient medical records available for inspection and copying upon the oral or written request of Board consultants, investigators, compliance officers, attorneys, or the Executive Director of the Board.

7. Respondent shall personally appear before the Board, a committee of the Board, or a panel of Board representatives, at least two (2) times each year that Respondent is under the terms

and conditions of this Agreed Order. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Agreed Order.

8. Respondent shall give a copy of this Agreed Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has applied for privileges, or applies for privileges.

9. Respondent shall ensure that any inquiries which are made by any person or entity through any means to Respondent or Respondent's employees regarding Respondent's Texas medical licensure status are answered by accurate reference to this Agreed Order.

10. Upon request by any person or entity, either orally or in writing, Respondent shall provide a complete and legible copy of this Agreed Order to the requesting party within ten (10) calendar days of the request.

11. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment of licensure fees. If Respondent leaves Texas to live or practice medicine elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time

remaining on the Order when Respondent left the practice of medicine in Texas, retired, or had his license cancelled for nonpayment of licensure fees.

12. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.

13. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within ten (10) days of the address change. This information shall be submitted to the Verification Department and the Director of Hearings for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

14. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute a basis for disciplinary action by the Board against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute evidence of unprofessional or dishonorable conduct likely to deceive or defraud the public or injure the public.

15. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12 month period, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition. Petitions for modifying or terminating may be filed only once a year thereafter.

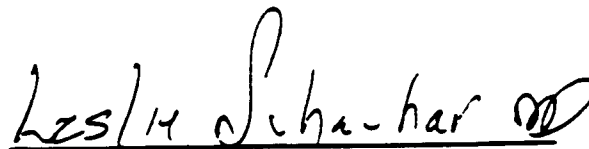
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS AGREEMENT FINALLY DISPOSES OF ALL COMPLAINTS AND INVESTIGATIONS PENDING AS OF THE DATE THIS ORDER IS SIGNED BY THE PRESIDENT OF THE BOARD.

THIS ORDER IS A PUBLIC RECORD.

I, LESLIE SCHACHAR, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 6/19/95, 1995


LESLIE SCHACHAR, M.D.
RESPONDENT

