



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D. M.P.P., M.P.H.  
Commissioner

Paula Wilson  
Executive Deputy Commissioner

March 21, 1994

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Denise Lepicier, Esq.  
Assistant Counsel  
New York State Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001

Gregory A. Marks, M.D.  
39512 Vineland Street  
Cherry Valley, California 92223

**RE: In the Matter of Gregory A. Marks, M.D.**

Dear Ms. Lepicier and Dr. Marks:

Enclosed please find the Determination and Order (No. 94-40) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health  
Office of Professional Medical Conduct  
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 than 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 (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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  
Corning Tower -Room 2503  
Empire State Plaza  
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.

Very truly yours,

*Tyrone T. Butler / u m n*

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mmn  
Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
GREGORY A. MARKS, M.D. : ORDER  
-----X

BPMC 94-40

A Notice of Hearing and Statement of Charges, both dated February 4, 1994, were served upon the Respondent, Gregory A. Marks, M.D. **EDMUND O. ROTHSCHILD, M.D. (Chair), VICTOR B. MARROW, and PASCUAL SANCHEZ-MUNOZ, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. A hearing was held on March 9, 1994. The Department of Health appeared by Denise Lepicier, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a

licensee is charged solely with a violation of Education Law 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 is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

#### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Gregory A. Marks, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on September 16, 1977, by the issuance of license number 132340 by the New York State Education Department. Respondent is not currently registered

with the New York State Education Department to practice medicine in New York State. (Pet. Ex. #2).

2. On or about May 16, 1986, Respondent entered into an agreement with the Florida Board of Medical Examiners (hereinafter "Florida Board") whereby Respondent surrendered his Florida medical license "for the purpose of having said license revoked" in settlement of a pending disciplinary action. The Florida Board had charged Respondent with violations of Florida Statutes (1985) Section 458.331(1), subsection (i) [knowingly filing a false report in the licensee's capacity as a licensed physician], and/or subsection (l) [making deceptive, untrue or fraudulent representations in the practice of medicine], and subsection (s) [being unable to practice medicine with reasonable skill and safety to patients by reason of the use of alcohol or as a result of a mental condition]. (Pet. Ex. #3).

3. On or about January 19, 1990, Respondent entered into an agreement with the California Board of Medical Examiners (hereinafter "California Board") whereby Respondent's license to practice medicine in the State of California was ordered revoked, said revocation was stayed, and, *inter alia*, Respondent was placed on five years of monitored probation pending Respondent's successful completion of an oral and/or written examination, a psychiatric evaluation and/or treatment, and twenty-five additional hours of continuing medical education per year. As part of the settlement, Respondent stipulated and agreed that he was liable for

disciplinary action for violations of California Business and Professions Code Sections 490 and 2236 [conviction of a crime substantially related to the qualifications, functions, or duties of the profession]. (Pet. Ex. #4).

4. On June 17, 1993 the California Board revoked Respondent's California medical license. The revocation was ordered pursuant to a Stipulation in Lieu of Hearing whereby Respondent admitted violating the terms of probation which had been imposed by the California Board in the 1990 settlement. More specifically, Respondent admitted failing to satisfy the psychiatric evaluation and continuing education provisions of his probation. In addition, on July 19, 1990, Respondent was convicted of malicious mischief, a misdemeanor, while on probation. Respondent failed to report his arrest and conviction on his quarterly reports to the California Board. Respondent also failed to report his arrest for grand theft and receiving or possessing stolen property on March 8, 1992. (Pet. Ex. #5).

#### **CONCLUSIONS OF LAW**

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent surrendered his Florida medical

license following the institution of disciplinary action by the Florida Board. (See, Pet. Ex. #3 for a full recitation of the allegations raised against Respondent by the Florida Board). The Hearing Committee concluded that Respondent's conduct would constitute professional misconduct in violation of Education Law Sections 6530 (2) [practicing the profession fraudulently], 6530(21) [willfully making or filing a false report] and 6530(32) [failing to maintain accurate records], if committed in New York State. As a result, the Hearing Committee voted to sustain the First Specification.

The Hearing Committee further concluded that Respondent's California medical license had been revoked by the California Board. The preponderance of the evidence demonstrates that Respondent's California medical license was revoked, with the revocation stayed and Respondent placed on monitored probation, following a criminal conviction for carrying a concealed weapon. The Hearing Committee concluded that Respondent was guilty of professional misconduct in violation of Education Law Section 6530 (9)(a)(i) by virtue of this criminal conviction.

The Hearing Committee further found that Respondent violated the terms of probation imposed by the California Board when it stayed the revocation of his license on January 19, 1990. The record established that Respondent admitted to numerous violations of his terms of probation and agreed to the revocation of his California medical license.



### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The record established the fact that Respondent's licenses to practice medicine in Florida and California had been revoked for a variety of reasons. California initially stayed the revocation of his Respondent's license and placed him on probation. However, the California Board ultimately reinstated the revocation due to numerous violations of the terms of probation.

Respondent has repeatedly demonstrated that he is either unwilling or unable to conform his conduct to the standards of the medical profession. He failed to appear and present any evidence in mitigation. The documentation which he submitted via fax on the morning of the hearing (See, Respondent's Ex. A), is misleading, and shows no evidence of remorse or of any insight into Respondent's problems. Under the totality of the circumstances, the Hearing Committee unanimously determined that revocation is the only appropriate sanction.

ORDER

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

1. The First and Second Specifications of professional misconduct set forth in the Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED**;

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

DATED: Albany, New York  
*MARCH 16*, 1994



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EDMUND O. ROTHSCHILD, M.D. (Chair)

VICTOR B. MARROW  
PASCUAL SANCHEZ-MUNOZ, M.D.

TO: Denise Lepicier, Esq.  
Assistant Counsel  
New York State Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001

Gregory A. Marks, M.D.  
39512 Vineland Street  
Cherry Valley, California 92223

APPENDIX I

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

-----X  
: IN THE MATTER : NOTICE OF  
: OF : REFERRAL  
: GREGORY A. MARKS, M.D. : PROCEEDING  
: :  
-----X

TO: GREGORY A. MARKS, M.D.  
39512 Vineland Street  
Cherry Valley, Ca. 92223

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 9th day of March, 1994 at 11:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before February 25, 1994 .

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before February 25, 1994 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 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: New York, New York  
*Jan Feb 4,* 1994

*Chris Stern Hyman for:*

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CHRIS STERN HYMAN  
COUNSEL  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Denise Lepicier  
Assistant Counsel  
(212) 613-2617

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
GREGORY A. MARKS, M.D. : CHARGES  
-----X

GREGORY A. MARKS, M.D., the Respondent, was authorized to practice medicine in New York State on September 16, 1977, by the issuance of license number 132340 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in this State.

FACTUAL ALLEGATIONS

- A. On or about May 16, 1986, Respondent entered into an agreement with the Florida Board of Medical Examiners whereby Respondent surrendered his Florida license to practice medicine "for the purpose of having said license revoked" in settlement of disciplinary action number 0040109. Said disciplinary action charged Respondent with violations of Florida Statutes (1985) Section 458.331(1), subsection (i) [knowingly filing a false report in the licensee's capacity as a licensed physician], and/or subsection (1) [making



deceptive, untrue or fraudulent representations in the practice of medicine], and subsection (s) [being unable to practice medicine with reasonable skill and safety to patients by reason of the use of alcohol or as a result of a mental condition]. The conduct resulting in this disciplinary action would, if committed in this State, constitute misconduct under the laws of the State of New York, including, but not necessarily limited to, New York Educ. Law Section 6530 (2), (21) and (32) (McKinney's Supp. 1994).

- B. On or about January 19, 1990, the Respondent entered into an agreement with the California Board of Medical Examiners whereby Respondent's license to practice medicine in the State of California was ordered revoked, said revocation was stayed, and, among other things, Respondent was placed on five years of monitored probation pending Respondent's successful completion of an oral and/or written examination, a psychiatric evaluation and/or treatment, and twenty-five additional hours of continuing medical education per year, in settlement of disciplinary action number 3921. Said disciplinary action charged Respondent, among other things, with violation of California Business and Professions Code Section 490 and 2236 [conviction of a crime substantially related to the qualifications, functions, or duties of the profession]. The conduct resulting in this disciplinary

action would, if committed in this State, constitute misconduct under the laws of the State of New York, including, but not limited to New York Educ. Law Section 6530 (9)(a)(i). Subsequently, on or about June 17, 1993, the Respondent entered into an agreement with the California Board of Medical Examiners whereby Respondent's license to practice medicine in the State of California was revoked in settlement of disciplinary action number 4935 which charged a violation of the terms of probation imposed by the Board in settlement of disciplinary action number 3921.

#### SPECIFICATIONS

#### FIRST AND SECOND SPECIFICATIONS

#### DISCIPLINARY ACTIONS TAKEN BY OTHER STATES

Respondent is charged with professional misconduct by reason of having his license to practice medicine, revoked, suspended or having other disciplinary action taken, and/or by reason of having voluntarily surrendered his license after a disciplinary action was instituted, by a duly authorized professional disciplinary agency of another state, within the meaning of N.Y. Educ. Law Section 6530 (9)(d) (McKinney's Supp. 1994), in that Petitioner charges:

1. The facts in paragraph A.

2. The facts in paragraph B.

DATED: New York, New York

2/4/74



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Chris Stern Hyman  
Counsel  
Bureau of Professional  
Medical  
Conduct