



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 28, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Benjamin Gross, M.D.
424 N. Formosa Avenue
Los Angeles, CA 90036-2525

Benjamin Gross, M.D.
425 S. Fairfax Avenue #302
Los Angeles, CA 90036

Robert Bogan, Esq.
NYS Department of Health
433 River Street – 4th Floor
Troy, New York 12180

RE: In the Matter of Benjamin Gross, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-239) 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.

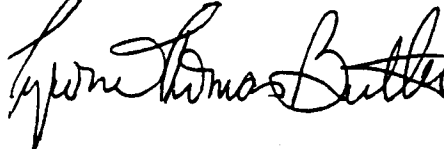
The notice of review served on the Administrative Review Board should be forwarded to:

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, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

**IN THE MATTER
OF
BENJAMIN GROSS, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-00-239

A Notice of Referral Proceeding and Statement of Charges, both dated, July 24, 2000, were served upon the Respondent, **BENJAMIN GROSS, M.D.**

ARSENIO AGOPOVICH, M.D., Chairperson, **ERNST A. KOPP, M.D.** and **GEORGE SIMMONS, Ed.D.**, duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on August 17, 2000, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent failed to appear, but he did submit a response to the instant charges, which was received into evidence as Respondent's Exhibit A.

Evidence was received and transcripts of these proceeding 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 case, 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 Section 6530(9)(a)(iii), (b) and (d). A copy of the Notice of Referral Proceeding and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

<u>For the Petitioner:</u>	None
<u>For the Respondent:</u>	None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **BENJAMIN GROSS, M.D.**, the Respondent, was authorized to practice medicine in New York state on September 8, 1978, by the issuance of license number 135748 by the New York State Education Department. (Pet's. Ex. 4).

2. On October 31, 1996, in Superior Court of California, County of Los Angeles, Respondent was convicted, on his plea of nolo contendere, of violation of Business and Professions Code section 650 (Capping), a misdemeanor substantially related to the qualifications, functions and duties of a physician and surgeon.

Imposition of sentence was stayed. Respondent was placed on probation for a period of three (3) years and was ordered to pay restitution of ten thousand dollars (\$10,000). He was also ordered to pay an additional restitution fine of ten thousand dollars (\$10,000). However, payment of the fine was stayed while restitution was being paid. Respondent paid the restitution in full and the stay of payment of the restitution fine became permanent. (Pet's. Ex. 5).

3. The count to which Respondent pled nolo contendere was not part of the original indictment. It was added to the indictment (Count 121) as part of the plea

negotiation. Respondent agreed to enter his plea in exchange for a dismissal of the other counts pending against him and the agreement of the Deputy District Attorney not to oppose an expungement motion after three years of probation. The added count read:

"On or about April 5, 1988 in the County of Los Angeles defendant Benjamin Gross, a medical doctor, did offer, deliver, receive or accept, any rebate, refund, commission, reference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or co-ownership in or with any person to whom such patients, clients or customers (sic) in violation of B&P Code §650, a misdemeanor, also commonly known as capping." (Pet's Ex. 5).

4. On October 19, 1999, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, by a Decision (hereinafter "California Decision"), revoked the Respondent's license, stayed the revocation, placed him on six (6) years probation, and required him to complete an ethics course, to perform ten (10) hours of community service every month for the first thirty-six (36) months of probation, have a practice monitor, and pay \$5,102.80 reimbursement, based upon the criminal conviction described in Finding of Fact Nos. 2 and 3. (Pet's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(9)(a)(iii) (being convicted of a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by reason of having been found guilty of committing a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state laws.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

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)

THIRD SPECIFICATION

Respondent violated New York Education Law 6530(9)(d) by reason of having had his license to practice medicine revoked or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional 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 the violations, which are the basis of this case, occurred in California in 1988. Based on these 1988 violations, the California courts took action against the Respondent in 1996 and the Medical Board of California took action against him in 1999.

The California Medical Board revoked the Respondent's license, stayed the revocation, placed him on six (6) years probation, and required him to complete an ethics course, to perform t to perform ten (10) hours of community service every month for the first thirty-six (36) months of probation, have a practice monitor, and pay \$5,102.80 reimbursement, based upon the criminal conviction by the California court.

thirty-six (36) months of probation, have a practice monitor, and pay \$5,102.80 reimbursement, based upon the criminal conviction by the California court.

Based on the circumstances of the case, the Hearing Committee determines that the Respondent's license to practice medicine in the State of New York should be **SUSPENDED** for a period of five (5) years, **SUSPENSION STAYED**, and that he be placed on probation under terms and conditions as hereinafter specified in the ORDER.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for a period of five (5) years, **SUSPENSION STAYED**.
2. The Respondent is placed on probation for a period to coincide with the probation imposed by the Medical Board of California.
 - a) The Respondent shall comply with all the terms and conditions of probation as prescribed by the Medical Board of California.
 - b) The Respondent shall cause the California Board to submit semi-annual reports to the Office of Professional Medical Conduct reporting on his compliance or failure to comply with any of the terms of his California probation.
 - c) Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/ or any such other proceeding against the Respondent as may be pursuant to the law.

3. If, at some future date, the Respondent chooses to return to practice in New York he must::

- Provide ninety days prior notice concerning his return to the Office of Professional Medical Conduct,
- Include with the notice proof that his license remains in good standing in all states where he maintains a license; and
- Provide information concerning this disciplinary action to any New York hospital at which he applies for privileges and/or employment.

4. 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: Aug. 24, 2000
TROY, New York



ARSENIO AGOPOVICH, M.D.,
Chairperson

ERNST A. KOPP, M.D.
GEORGE SIMMONS, Ed.D.

APPENDIX I

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

IN THE MATTER
OF
BENJAMIN GROSS, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: BENJAMIN GROSS, M.D.
424 N. Formosa Avenue
Los Angeles, California 90036-2525

BENJAMIN GROSS, M.D.
425 S. Fairfax Avenue #302
Los Angeles, California 90036

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 August, 2000 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.

EXHIBIT

If you intend to present sworn testimony, the number of witnesses and 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, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 7, 2000.

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 August 7, 2000 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

July 24, 2000



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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

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

IN THE MATTER
OF
BENJAMIN GROSS, M.D.

STATEMENT
OF
CHARGES

BENJAMIN GROSS, M.D., the Respondent, was authorized to practice medicine in New York state on September 8, 1978, by the issuance of license number 135748 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 31, 1996, in the Superior Court of California, County of Los Angeles, the Respondent was found guilty of a violation of Business and Professions Code §650 (Capping), a misdemeanor substantially related to the qualifications, functions and duties of a physician and surgeon.

B. On or about September 5, 1999, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, by a Decision (hereinafter "California Decision"), revoked the Respondent's license, stayed the revocation, placed him on six (6) years probation, and required him to complete an ethics course, to perform ten (10) hours community service every month for the first thirty-six (36) months of probation, have a practice monitor, and pay \$5,102.80 reimbursement, based upon the criminal conviction described in paragraph A above.

C. The conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(9)(a)(i) (being convicted of a crime under state law); and/or

2. New York Education Law §6530(9)(a)(iii) (being convicted of a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by reason of having been found guilty of committing a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state laws, in that Petitioner charges:

1. The facts in paragraph A.

SECOND 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:

2. The facts in paragraphs A, B and/or C.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by reason of having had his license to practice medicine revoked or having other 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 revocation or other 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, B and/or C.

DATED: *July 24*, 2000
Albany, New York


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