

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

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

June 17, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Wu-Hsiung Su, M.D.  
11708 New Albion Drive  
Gold River, CA 95670

Wu-Hsiung, M.D.  
P.O. Box 2852  
Rancho Cordova, CA 95741

Bradley C. Mohr, Esq.  
NYS Department of Health  
Corning Tower Room 2503  
Empire State Plaza  
Albany, New York 12237

Wu-Hsiung Su, M.D.  
Suite 204  
250 Wampanoag Tr.  
East Providence, RI 02915

**RE: In the Matter of Wu-Hsiung Su, M.D.**

Dear Dr. Su and Mr. Mohr:

Enclosed please find the Determination and Order (No. 97-137) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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


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

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's  
Determination and Order.

Sincerely,

Handwritten signature of Tyrone T. Butler in black ink, followed by the initials 'nm'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
WU-HSIUNG SU, M.D.**

**DETERMINATION**

**AND**

**ORDER**

**BPMC - 97 - 137**

**LYON M. GREENBERG, M.D.**, (Chair), **DATTA G. WAGLE, M.D.** and **GEORGE COUPERTHWAIT, JR.**, 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 ("ALJ"), served as the Administrative Officer.

The Department of Health appeared by **BRADLEY C. MOHR, ESQ.**, Assistant Counsel.

Respondent, **WU-HSIUNG SU, M.D.**, did not appear personally and was not represented by counsel.

A Hearing was held on June 10, 1997. 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 ["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 licensee<sup>1</sup> (Respondent).

WU-HSIUNG SU, 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 [First, Second and Third Specifications] and § 6530[9][b] of the Education Law).

In order to find that Respondent committed § 6530(9)(b) misconduct, the Hearing Committee 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.

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<sup>1</sup> P.H.L. §230(10)(p), fifth sentence.

Respondent is also charged with professional misconduct within the meaning of § 6530(9)(d) of the Education Law, to wit: professional misconduct ... by reason of having disciplinary action taken or having voluntarily or otherwise surrendered his license after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, for conduct, which conduct, would, if committed in New York State constitute professional misconduct under the Laws of New York State (Petitioner's Exhibit # 1 [Fourth, Fifth and Sixth Specifications] and § 6530[9][d] of the Education Law).

In order to find that Respondent committed § 6530(9)(d) misconduct, the Hearing Committee must determine: (1) whether Respondent had some disciplinary action taken or instituted against him by a duly authorized professional disciplinary agency of another state; OR (2) whether Respondent surrendered his license after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state: AND (3) whether Respondent's conduct, on which the disciplinary action or surrender was taken would, if committed in New York State, constitute professional misconduct under the laws of New York State.

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 on November 15, 1988 by the issuance of license number 176792 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)<sup>2</sup>.

2. Respondent is not currently registered with the New York State Education Department to practice medicine (Petitioner's Exhibit # 2).

3. Mike Singh attempted to personally serve Respondent with a Notice of Hearing and Statement of Charges on at least 10 separate occasions, in May 1997 (Petitioner's Exhibit # 1).

4. On May 21, 1997, Kathy Ceroalo mailed, by certified mail and regular mail, a copy of a Notice of Referral Proceeding and a Statement of Charges to Respondent at 3 separate addresses (Petitioner's Exhibit # 1).

5. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (determination made by the ALJ); (P.H.L. § 230[10][d]); (Petitioner's Exhibit # 1); [T-XX]<sup>3</sup>.

6. The Board of Medical Licensure and Discipline of the State of Rhode Island ("**Rhode Island Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of Rhode Island (Petitioner's Exhibits # 4 & 5).

7. On February 13, 1991, by Consent Order in case No. C90-063, Respondent was disciplined by the Rhode Island Board ("**2/13/91 Order**") (Petitioner's Exhibit # 5).

8. The 2/13/91 Order required that Respondent: receive a reprimand; complete at least 10 (ten) hours of academic classroom or clinical study in neurological evaluation and pay costs of \$1,000 (Petitioner's Exhibit # 5).

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<sup>2</sup> refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit). No exhibits were submitted by or on behalf of Dr. Su.

<sup>3</sup> Numbers in brackets refer to transcript page numbers [T- ].

9. The Rhode Island Board, in case No. C91-045, dated September 30, 1994, found Respondent guilty of unprofessional conduct ("**9/30/94 Order**") (Petitioner's Exhibit # 4).

10. The 9/30/94 Order indicates that Respondent: (1) failed to properly diagnose Diabetes Mellitus; (2) was involved in misleading and deceptive advertising; (3) failed to provide a well designed and strictly supervised weight loss program; (4) prescribed Melfiat (an appetite suppressant) excessively; and (5) used medically unjustified drug therapy (Petitioner's Exhibit # 4).

11. The 9/30/94 Order: (1) suspended Respondent from the practice of medicine until he satisfactorily completed education courses in (a) metabolic and endocrine diseases; (b) medical records, including documentation of patient histories, symptoms and/or complaints and treatments undertaken; and (c) management of obesity; and the Order assessed Respondent with an administrative fee of \$5,000 (Petitioner's Exhibit # 4).

12. The Medical Board of California, Division of Medical Quality of the State of California ("**California Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of California (Petitioner's Exhibit # 3).

13. Respondent was charged by the California Board, by Accusation No. 16-91-14733, dated March 29, 1995, with unprofessional conduct based on the 2/13/91 Order and the 9/30/94 Order of the Rhode Island Board (Petitioner's Exhibit # 3).

14. On December 11, 1995, effective January 10, 1996, the California Board issued a decision which revoked Respondent's license to practice Medicine in California; stayed the revocation; placed Respondent on probation for 5 years; and imposed numerous conditions and terms of probation (Petitioner's Exhibit # 3).

15. Respondent has not filed a written answer to each (or any) of the charges and allegations contained in the Statement of Charges (Petitioner's Exhibit # 1); (P.H.L. § 230[10][p]).



16. Paragraphs 1 through 9 of the Factual Allegations contained in the May 8, 1997 Statement of Charges are deemed admitted by the Hearing Committee by operation of Law (P.H.L. § 230[10][p]); (See Appendix I).

17. The Hearing Committee finds that the charges of professional misconduct within the meaning of Education Law § 6530(9)(b) and within the meaning of Education Law § 6530(9)(d) are deemed admitted by operation of Law (P.H.L. § 230[10][p]); (First, Second, Third, Fourth, Fifth, and Sixth Specifications); (See Appendix I).

### **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 Factual Allegations, from the May 8, 1997 Statement of Charges, are SUSTAINED.

The Hearing Committee further concludes, based on the above Factual Conclusion, that ALL OF THE SIX SPECIFICATIONS in the Statement of Charges are SUSTAINED.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of unprofessional conduct by the States of Rhode Island and California. The Hearing Committee determines that Respondent's conduct in Rhode Island and California would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

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

The Rhode Island Board is a duly authorized professional disciplinary agency. In 1991 and in 1994, the State of Rhode Island, through the Rhode Island Board issued final disciplinary action against Respondent.

Both the 1991 and the 1994 Orders contain facts and conclusions which establish that Respondent's conduct constituted grounds for findings of unprofessional conduct by Respondent, resulting in substantial punishment and sanctions.

The record establishes that Respondent committed the New York equivalent of professional misconduct pursuant to at least § 6530(3)<sup>4</sup>; and § 6530(4)<sup>5</sup> of the Education Law.

Respondent's acts constituted negligence in that he failed to recognize spinal cord compression and obtain an orthopedic consultation until after a visit to Respondent's office and 2 emergency room visits. The consultation, which did not take place in a timely manner, caused a delay of 2 days during which Respondent's patient developed a fever and required a urinary catheterization. The orthopedic consultation necessitated a neurologic consultation and an emergency myelogram and neurosurgical consultation revealing a total blockage at the third lumbar disk space. Respondent's patient underwent surgery for a spinal cord compression and suffered permanent neurologic damage.

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<sup>4</sup> Each of the following is professional misconduct... Practicing the profession with negligence on more than one occasion;

<sup>5</sup> Each of the following is professional misconduct... Practicing the profession with gross negligence on a particular occasion;

Respondent's acts also constituted negligence in that he failed to diagnose Diabetes Mellitus; (2) was involved in misleading and deceptive advertising; (3) failed to provide a well designed and strictly supervised weight loss program; (4) prescribed Melfiat (an appetite suppressant) excessively; and (5) used medically unjustified drug therapy. Respondent's did not even obtain a urine sample from this patient. Respondent's conduct was egregious.

Taking the findings of the Rhode Island Board as true, the Hearing Committee finds that the record establishes that Respondent is guilty of, at least, (1) practicing the profession with gross negligence; and (2) practicing the profession with negligence on more than one occasion.

Since the Hearing Committee has determined that Respondent's conduct, if committed in New York State, would constitute professional misconduct under § 6530(3) and § 6530(4) of the Education Law, Respondent has therefore committed professional misconduct pursuant to § 6530(9)(b) of the Education Law.

## **II. Professional Misconduct under §6530(9)(d) of the Education Law.**

As discussed above, Respondent had disciplinary action instituted against him by the Rhode Island Board. Respondent also had disciplinary action taken against him by the California Board.

The Hearing Committee finds and determines that Respondent's conduct on which the disciplinary action was taken would, if committed in New York State, constitute professional misconduct under § 6530(3) and § 6530(4) of the Education Law of New York State (See discussion under Part I and Findings of Fact above regarding Respondent's underlying acts).

Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(d) of the Education Law.

## 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 record clearly establishes that Respondent committed significant misconduct in Rhode Island. Respondent has a record of multiple acts of unprofessional conduct in Rhode Island. The Hearing Committee recognizes that California's actions were strictly based on the Rhode Island Board's prior findings. Respondent's license was revoked in California and the revocation stayed with probation for five years. The Hearing Committee also considered that Respondent was given another chance by Rhode Island in the first Order and that Respondent was charged only two years later with more unprofessional conduct.

In determining an appropriate measure of discipline to impose, the Hearing Committee is bound by the documentary evidence presented by Petitioner. Respondent failed to personally appear at the June 10, 1997 Hearing and provide any mitigation as to the sanctions to be imposed.

With regard to the issue of sanctions, the Hearing Committee recognizes that it is a generally accepted principal that the State where respondent lived and practiced medicine at the time of the offense has the greatest interest in the issue and the public policy considerations relevant to such disciplinary actions. The sanctions issued by the States of Rhode Island and California have been reviewed and carefully considered by the Hearing Committee. Based on all the evidence presented, the Hearing Committee determines that the actions taken by Rhode Island are not sufficient to adequately protect the people of the State of New York. California, where Respondent was most recently practicing, revoked Respondent's license but stayed the revocation and placed him on probation for five years. The Hearing Committee believes that the New York public will better be protected by an unstayed revocation. Accordingly, Respondent's license to practice medicine in the State of New York should be revoked.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented relative to Respondent's acts of negligence, gross negligence and dishonesty in advertising, the Hearing Committee would have voted unanimous for revocation of Respondent's license.

The Hearing Committee considers Respondent's misconduct to be very serious. 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 totality of the circumstances presented.


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

**DATED:** New York, New York  
June 12, 1997

  
\_\_\_\_\_  
**LYON M. GREENBERG, M.D., (Chair)**  
**DATTA G. WAGLE, M.D.**  
**GEORGE COUPERTHWAIT, JR.**

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# APPENDIX I

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

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IN THE MATTER : STATEMENT  
OF : OF  
WU-HSIUNG SU, M.D. : CHARGES

-----X

WU-HSIUNG SU, M.D., the Respondent, was authorized to practice medicine in New York State on November 15, 1988 by the issuance of license number 176792 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. Respondent on or about February 13, 1991, by Consent Order in adjudicatory case No. C90-063, was disciplined by the State of Rhode Island and Providence Plantations, Department of Health, Board of Medical Licensure and Discipline. The Rhode Island Board's Consent Order with Respondent required him to: receive a reprimand; and take at least 10 (ten) hours of continuing medical education academic classroom or clinical study in neurological evaluation and pay costs of \$1000.

2. Respondent was charged by the Board of Medical Licensure and Discipline of Rhode Island, in case No. C90-063, dated February 13, 1991, with failing to obtain a timely consultation and failure to recognize the severity of the patient's medical problem. The conduct with which Respondent was



charged involved the failure to recognize spinal cord compression and to obtain an orthopedic consultation until after a visit to the Respondent's office and 2 emergency room visits. The consultation which did not take place in a timely manner, caused a delay of 2 days during which the patient developed a fever and required a urinary catheterization. The orthopedic consultation necessitated a neurologic consultation and an emergency myelogram and neurosurgical consultation revealing a total blockage at the third lumbar disk space. The patient underwent surgery for a spinal cord compression and suffered permanent neurologic damage.

3. The conduct resulting in the discipline imposed by the State of Rhode Island and Providence Plantations, Department of Health, Board of Medical Licensure and Discipline would if committed in New York State constitute professional misconduct under New York Education Law, namely §6530 (3) (practicing the profession with negligence on more than one occasion) and /or New York Education Law 6530 (4) (practicing the profession with gross negligence on a particular occasion).

4. Respondent on or about September 30, 1994, by Order in adjudicatory case No. C91-045, was disciplined by the State of Rhode Island and Providence Plantations, Department of Health, Board of Medical Licensure and Discipline. The State of Rhode Island Board's Order suspended Respondent from the practice of medicine until he satisfactorily completed continuing medical education courses, subject to the prior approval of the Board of

Medical Licensure, in metabolic and endocrine diseases that affect adults; medical records, including documentation of patient histories, symptoms and/or complaints and treatments undertaken; management of obesity and pay an administrative fee of \$5000.

5. Respondent was found guilty by the Board of Medical Licensure and Discipline of Rhode Island, in case No. C91-045, dated September 30, 1994 of: failing to properly diagnose Diabetes Mellitus; misleading and deceptive advertising; failing to provide a well designed and strictly supervised weight loss program that included an exercise program or specific diet or diet counseling and using a medically unjustified drug therapy. The conduct which respondent was charged with involved the treatment of a patient over a period of approximately 11 months.

6. The conduct resulting in the discipline imposed by the State of Rhode Island and Providence Plantations, Department of Health, Board of Medical Licensure and Discipline would if committed in New York State constitute professional misconduct under New York Education Law, namely §6530 (3) (practicing the profession with negligence on more than one occasion) and /or New York Education Law 6530 (4) (practicing the profession with gross negligence on a particular occasion).

7. Respondent on or about January 10, 1996, by Decision in adjudicatory case No. 16-91-14733, OAH No. N-9504126, was disciplined by the State of California, Division of Medical

Quality, Medical Board, Department of Consumer Affairs. The California, Medical Board's decision suspended him from the practice of Medicine until such time as he has satisfactorily completed continuing medical education courses in: adult metabolic and endocrine diseases; medical records, including documentation of patient's histories, symptoms and/or complaints and treatments undertaken; management of obesity and pay an administrative fine of \$5000 dollars.

8. Respondent was charged by the Medical Board of California, by Accusation No.16-91-14733, dated March 29, 1995, with unprofessional conduct in that on September 30, 1994 , the State of Rhode Island imposed discipline on Respondent's license to practice medicine in that state for unprofessional conduct in the treatment of a patient for weight loss and on the grounds of unprofessional conduct, in that on February 13, 1991, discipline was imposed on Respondent's license to practice medicine in the State of Rhode Island for failing to recognize the severity of a patient's medical problems.

9. The conduct resulting in the discipline imposed by the State of California, Division of Medical Quality, Medical Board, Department of Consumer Affairs would if committed in New York State, constitute professional misconduct under New York Education Law, namely §6530 (9)(d) (disciplinary actions by another state) and /or New York Education Law 6530 (9)(b) (guilty of misconduct in another state).

SPECIFICATIONS OF MISCONDUCT

FIRST, SECOND AND THIRD SPECIFICATIONS

GUILTY OF MISCONDUCT IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9)(b) in that he was 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 of paragraphs 1,2 and /or 3;
2. The facts of paragraphs 4,5 and /or 6;
3. The facts of paragraphs 7,8 and /or 9.


FOURTH, FIFTH AND SIXTH SPECIFICATIONS

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9)(d) in that he had disciplinary action taken against his license 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:

4. The facts of paragraphs 1,2 and /or 3.
5. The facts of paragraphs 4,5 and /or 6;
6. The facts of paragraphs 7,8 and /or 9.

DATED: May 6, 1997  
Albany, New York

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