



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H. , Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

September 30, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Vinay Kumar Malviya, M.D.  
4610 Cimarron Drive  
~~Bloomfield Hills~~ Bloomfield Hills, Michigan 48302  
*Bloomfield*

Vinay Kumar Malviya, M.D.  
Providence Medical Building  
22250 Providence Drive, Ste. 210  
Southfield, Michigan 48075

Robert Bogan, Esq.  
Associate Counsel  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street – 1<sup>st</sup> Floor Annex  
Troy, New York 12180

William Wood, Esq.  
Wood & Scher  
The Harwood Building  
Scarsdale, New York 10583

**RE: In the Matter of Vinay Kumar Malviya, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.02-305) 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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:djh  
Enclosure

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

**COPY**

IN THE MATTER  
OF  
**VINAY KUMAR MALVIYA, M.D.**

DETERMINATION  
AND  
ORDER

BPMC No. 02-305

A Notice of Referral Proceeding and Statement of Charges, both dated May 1, 2002, were served upon the Respondent, **VINAY KUMAR MALVIYA, M.D.** **MICHAEL R. GOLDING, M.D.**, Chairperson, **JOHN B. WALDMAN, M.D.** and **MS. FRANCES TARLTON**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 19, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person and by **WILLIAM WOOD, ESQ.**

Evidence was received and transcripts of these proceedings were made.

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

## STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (3) and (4). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

### WITNESSES

For the Petitioner:

None

For the Respondent:

Respondent  
Richard Hausknecht, M.D.  
Shobha Malviya, M.D.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. **VINAY KUMAR MALVIYA, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 27, 1979, by the issuance of license number 139093 by the New York State Education Department (Ex. 4).
2. On November 11, 2001, the Michigan Board of Medicine issued a Consent Order that incorporated a Stipulation previously agreed to by Respondent and the Michigan Board wherein Respondent admitted that certain allegations in an Administrative Complaint, issued on June 25, 2001, could be treated as true for the purpose of determining discipline to be imposed against him. The essence of the allegations in the complaint was that Respondent had committed negligence in his handling of a failed attempt to induce a termination of pregnancy in a patient, including by the administration of Methotrexate (Ex. 5). Allegations that Respondent had exhibited incompetence were dismissed. Based upon the Consent Order's acceptance of the findings of negligence in the Administrative Complaint, Respondent was assessed a fine of \$3,000.

### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the Michigan Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to Education Law Sections 6530(9)(b) and (d), because the conduct would have constituted misconduct had it been committed in New York State, under New York Education Law §6530(3) (negligence on more than one occasion).

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

#### **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

### **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that, as set forth in fact-finding #2, above, Respondent entered into a consent agreement with the Michigan Board wherein he agreed to disciplinary action after a disciplinary proceeding was instituted against him based upon allegations of negligence and incompetence in his handling of a course of treatment for one patient. The allegations of incompetence were specifically dismissed with prejudice, so no finding of incompetence will be made in this decision.

In the Consent agreement, Respondent, although not specifically admitting to the allegations, did not contest them and agreed that they could be treated as true for the purpose of the Consent Order. These allegations detailed Respondent's handling of the case of a pregnant patient with a fibroid uterus, including a series of procedures instituted in an attempt to terminate the pregnancy. These steps, which included the use of Methotrexate, which was administered, according to the findings, on four occasions, were unsuccessful, and the patient eventually gave birth to a child with significant medical problems (the patient underwent a hysterectomy at the same time the child was born by Cesarean section).

The Michigan Board stated, in the allegations, that the conduct described constituted negligence, and this conclusion is sufficient to support a finding in the instant case that Respondent's conduct, had it been committed in New York State, would have constituted misconduct by reason of negligence on more than one occasion (New York Education Law §6530(3)).

Since the conduct led to the filing of disciplinary charges and the taking of disciplinary action by the Michigan Board, Respondent was guilty of misconduct in New York State under §6530(9)(b) and (d). The Administrative Law Judge declined to allow testimony or the taking of additional documentary evidence addressed by Respondent to the propriety of the Michigan findings of negligence or the seriousness of those findings, since those findings are binding as made on this tribunal pursuant to Public Health Law §230(10)(p). Respondent's Memorandum in Support, which contains these arguments, was admitted into the record by agreement of the Department, but was not viewed by the Hearing Committee. In addition, the Hearing Committee declines to dismiss the charges in

the interest of justice as requested by Respondent. Therefore, the only issue remaining to be decided is the penalty to be imposed in this state.

The Hearing Committee considered the entire range of penalties available by statute (Public Health Law §230-a), and determined that the appropriate penalty to be imposed is a fine of \$2,000. It is apparent from the limited penalty imposed by the State of Michigan (a \$3,000 fine) and the rationale expressed therefor, that it viewed the actions or inactions by Respondent that led to the Order to have been correctable and to have been corrected. This conclusion is based upon the listing in the Stipulation of the factors taken into consideration in imposing that penalty, and these factors are reproduced below because they suggest the nature of the problems that led to the disciplinary proceeding and Consent Order:

- A. Respondent has cooperated fully in the resolution of this matter.
- B. Respondent has relocated his practice from Hutzel Hospital to other hospitals, and is now able to exercise more complete control over office policies and procedures and over the treatment regimens administered through his practice, including more control over the staff of the chemotherapy facility, where his patients receive treatment, to help avoid problems such as in this matter where he was not in a position to exercise sufficient direction and control over chemotherapy staff.
- C. Respondent now expressly requires in his office that all policies and procedures must apply to patients who are hospital and office employees, as well as to patients without such connections, to help avoid problems such as in this matter where patient/employees could circumvent office procedures.
- D. Respondent has changed his documentation procedures to help ensure that all significant contacts with patients, even if they are hospital or office employees, are noted in the patients' medical records.
- E. Respondent has altered his office procedures to help ensure that, except when another physician is assigned to cover for him, he personally orders all laboratory testing and all medications (including chemotherapy) administered to his patients through his practice, even



where the patient is a hospital or office employee, to help avoid problems such as in this matter where a patient/employee could obtain laboratory testing without a physician order or obtain a medication order from another physician unfamiliar with the patient history and treatment plan.

It is apparent from this language, coupled with the persuasive evidence relating to Respondent's impressive medical training, skills and dedication (including his C.V. (Ex. B); his own testimony; and the highly favorable testimony of Dr. Richard Hausknecht and Dr. Shobha Malviya, Respondent's wife) that Respondent presents no danger to his patients and that any discipline beyond a fine would be inappropriate and might tend to unduly hinder the medical career of a physician whose practice of medicine should, rather, be encouraged.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. A **FINE** in the amount of Two Thousand Dollars (\$2,000.00) is assessed **VINAY KUMAR MALVIYA, M.D.** Payment of the fine shall be due within 60 days of the effective date of this Order. The Respondent shall make payment to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York, 12237. Any fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest; late payment charges and collection fees; referral to the New York Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).

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

DATED: **New York, New York**

27 Sept, 2002

  
**MICHAEL R. GOLDING, M.D.**  
Chairperson

**JOHN B. WALDMAN, M.D.**  
**MS. FRANCES TARLTON**



# APPENDIX 1

STATE OF NEW YORK DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT1  
1  
Jm & 9/19/02

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IN THE MATTER  
  
OF  
  
VINAY KUMAR MALVIYA, M.D.  
CO-02-01-0168-A

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NOTICE OF  
  
REFERRAL  
  
PROCEEDING

TO: VINAY KUMAR MALVIYA, M.D.  
4610 Cimarron Drive  
Bloomfield Hills, MI 48302

VINAY KUMAR MALVIYA, M.D.  
Providence Medical Building  
22250 Providence Drive, Ste. 210  
Southfield, MI 48075

**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 20<sup>th</sup> day of June 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

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

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

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 10, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 10, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.**

DATED: Albany, New York

*May 1*, 2002



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

VINAY KUMAR MALVIYA, M.D.  
CO-02-01-0168-A

STATEMENT

OF

CHARGES

VINAY KUMAR MALVIYA, M.D., the Respondent, was authorized to practice medicine in New York state on July 27, 1979, by the issuance of license number 139093 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about November 11, 2001, the State of Michigan, Department of Consumer & Industry Services, Bureau of Health Services, Board of Medicine, Disciplinary Subcommittee (hereinafter "Michigan Board"), by a Consent Order (hereinafter "Michigan Order"), fined Respondent \$3,000.00, based on negligence.

B. The conduct resulting in the Michigan Board 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(3) (negligence on more than one occasion);  
and/or
2. New York Education Law §6530(4) (gross negligence).

**SPECIFICATIONS**

**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would,



if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:


1. The facts in Paragraphs A and/or B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *May 1*, 2002  
Albany, New York

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