



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

May 12, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ugo Gallo, D.O.
13814 Osprey Nest Lane
Orlando, Florida 32837

Claudia Morales Bloch, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Ugo Gallo, D.O.

Dear Dr. Gallo and Ms. Bloch:

Enclosed please find the Determination and Order (No. 97-107) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

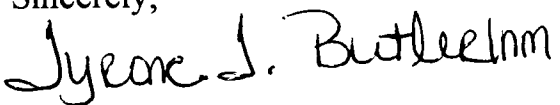
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T" and "B".

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
UGO GALLO, D.O.**

**DETERMINATION
AND
ORDER**

BPMC - 97 - 107

CONRAD ROSENBERG, M.D., (Chair), JACK SCHNEE, M.D. and CAROL LYNN HARRISON, Ph.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 **CLAUDIA MORALES BLOCH, ESQ.,** Associate Counsel.

Respondent, **UGO GALLO, D.O.,** did not appear personally and was not represented by counsel.

A Hearing was held on April 15, 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 licensee¹ (Respondent).

UGO GALLO, D.O., ("**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 § 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.

¹ 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 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 June 8, 1968 by the issuance of license number 101239 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)².

2. On March 7, 1997, Ed Gonzalez personally served on Respondent a copy of a Notice of Referral Proceeding and a Statement of Charges (Petitioner's Exhibit # 1).

3. Respondent contacted the Health Department's counsel subsequent to receipt of the aforementioned documents [T-7-8]³

4. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (P.H.L. § 230[10][d]); [T-8-9].

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

6. On September 11, 1991, the Ohio Board summarily suspended Respondent's certificate to practice medicine and surgery in Ohio. The Ohio Board alleged that Respondent's acts, conduct or omissions (from 1985 through late August 1991) constituted the inability to practice medicine by reason of mental illness or physical illness (Petitioner's Exhibit # 3).

7. On June 18, 1992, an Order was issued ("**1992 Order**") and entered by the Ohio Board which suspended Respondent's certificate to practice osteopathic medicine and surgery in Ohio for an indefinite period of time. The 1992 Order was based on a finding, after hearing, by the Ohio Board, that Respondent suffers from the "inability to practice according to acceptable and prevailing standards of care by reason of mental illness ..." (Petitioner's Exhibit # 3).

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

³ Numbers in brackets refer to transcript page numbers [T-].

8. On May 12, 1993 the Ohio Board granted Respondent's request to have his certificate to practice medicine reinstated, subject to certain terms and conditions of probation (Petitioner's Exhibit # 3).

9. On October 13, 1993 the Ohio Board notified Respondent that he failed to comply with certain terms of probation and that they were taking actions against his certificate to practice medicine in Ohio (Petitioner's Exhibit # 3).

10. On February 9, 1995, the Ohio Board issued an Order ("**1995 Order**") suspending Respondent's certificate to practice osteopathic medicine and surgery in Ohio for an indefinite period of time. The 1995 Order was based on a finding, after hearing, by the Ohio Board, that Respondent had violated the terms of his probation and conditions of limitations previously set by the Ohio Board in its 1992 Order (Petitioner's Exhibit # 3).

11. Respondent's conduct constituted violations of Ohio Statutes [§ 4731.22(B)(15) & § 4731.22(B)(19)]; (Petitioner's Exhibit # 3).

12. The Hearing Committee accepts the 1992 and the 1995 Orders and adopts them as part of its own Findings of Fact (Petitioner's Exhibit # 3).

13. 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]).

14. Paragraph A, B, C and D of the Factual Allegations contained in the March 4, 1997 Statement of Charges are deemed admitted by the Hearing Committee by operation of Law (P.H.L. § 230[10][p]).

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 March 4, 1997 Statement of Charges, are SUSTAINED.

The Hearing Committee further concludes, based on the above Factual Conclusion, that the FIRST and SECOND SPECIFICATION OF CHARGES 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 improper professional practice and of professional misconduct by the State of Ohio and his conduct in Ohio 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 Ohio Board is a duly authorized professional disciplinary agency. In September 1991, the State of Ohio, through the Ohio Board instituted disciplinary action against Respondent.

The 1992 Order contains facts and conclusions which establish that Respondent's conduct constituted grounds for indefinite suspension of his Ohio medical license. The 1992 Order has findings, by the Ohio Board, of guilt of violations of Ohio Statutes. The Ohio Board found by reliable, probative and substantial evidence that Respondent suffers from a mental illness which interferes with his ability to practice medicine. Therefore, Respondent was found guilty of improper professional practice or professional misconduct by the Ohio Board.

The 1995 Order indicates that Respondent is not able or is unwilling to comply with the conditions of practice limitations required by the Ohio Board. Respondent was again found guilty of improper professional practice or professional misconduct by the Ohio Board.

The record establishes that Respondent committed professional misconduct pursuant to at least § 6530(7)⁴; § 6530(8)⁵; and § 6530(29)⁶ of the Education Law.

Respondent was diagnosed as suffering from bipolar disorder and hypomania with paranoid aspects. Respondent's bipolar disorder was evident by manic and/or depressive mood phases. The paranoid aspects were evident through Respondent's express beliefs that he was being persecuted by various sources, including the local police department, the Board of Nursing, and the State (Ohio) Medical Board.

Respondent's request to be reinstated to practice medicine was granted by the Ohio Board in 1993. However, Respondent failed or refused to comply with the conditions of probation imposed by the Ohio Board.

Taking the findings of the Ohio Board as true, the Hearing Committee finds that the record establishes that Respondent is guilty of (1) practicing the profession while impaired by a mental disability; (2) having a psychiatric condition which impairs his ability to practice medicine; and (3) violating terms of probation or conditions imposed on him by the Ohio Board.

⁴ Each of the following is professional misconduct... Practicing the profession while impaired by ... mental disability;

⁵ Each of the following is professional misconduct... having a psychiatric condition which impairs the licensee's ability to practice;

⁶ Each of the following is professional misconduct... Violating any term of probation or condition or limitation imposed on the licensee ... ;

The Hearing Committee finds that Respondent's conduct, if committed in New York State, would constitute professional misconduct under at least § 6530(7); § 6530(8); and § 6530(29) of the Education Law.

Therefore, Respondent has 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 Ohio State Board. Ohio's actions resulted in an indefinite suspension of Respondent's medical license in Ohio. 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 at least § 6530(7); § 6530(8); and § 6530(29) of the Education Law of New York State (See discussion under Part I above).

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 Ohio. The fact that Respondent had an indefinite suspension of his license in Ohio and thereafter failed to comply with the terms of reinstatement was significant to the Hearing Committee

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 April 15, 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 State of Ohio have been reviewed and carefully considered by the Hearing Committee. Based on all the evidence presented, the Hearing Committee determines that the sanctions imposed by the State of Ohio are inadequate to protect the people of the State of New York.

In determining an appropriate measure of discipline to impose, the Hearing Committee has considered that Respondent was given several chances by Ohio, Respondent has shown an unwillingness to work with the Ohio Board, and Respondent has failed to provide the New York Hearing Committee with any mitigating factors. 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 impairments and failures to comply with the Ohio Board conditions, 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.

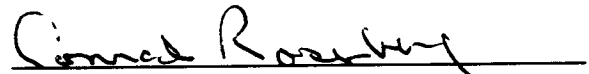
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

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

1. The 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
May 8, 1997



CONRAD ROSENBERG, M.D., (Chair),

JACK SCHNEE, M.D.

CAROL LYNN HARRISON, Ph.D.

Ugo Gallo, D.O.
13814 Osprey Nest Lane
Orlando, FL 32837

Claudia Morales Bloch, 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
UGO GALLO, D.O.

STATEMENT
OF
CHARGES

UGO GALLO, D.O., the Respondent, was authorized to practice medicine in New York State on or about June 8, 1965, by the issuance of license number 101239 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 17, 1992, an Order was issued by the State Medical Board of Ohio (hereinafter referred to as "the Ohio Board") suspending Respondent's certificate to practice osteopathic medicine and surgery in the State of Ohio for an indefinite period of time based upon a finding after hearing that Respondent suffered from the "inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness," pursuant to Section 4731.22(D), Ohio Revised Code. The Order further provided that, should Respondent apply for reinstatement of his certificate, specific probationary terms and conditions would be imposed for a minimum of five years.
- B. On or about May 12, 1993, the Respondent's request to the Ohio Board for reinstatement was granted, subject the probationary terms established by the Ohio Board in the June 17, 1992 Order, which included a requirement that the Respondent submit quarterly declarations of compliance with the terms of

probation, and that he submit the name of a monitoring physician within thirty days of the reinstatement of his certificate to practice.

- C. On or about February 9, 1995, the Ohio Board issued an Order suspending Respondent's certificate to practice osteopathic medicine and surgery in the State of Ohio for an indefinite period of time, but not less than ninety (90) days, based upon a finding that he had committed acts and/or omissions which constituted a "violation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued," pursuant to Section 4731.22(B)(15), Ohio Revised Code.
- D. Respondent's conduct, as set forth in paragraphs A, B, and C above would, if committed in New York State, constitute professional misconduct under the laws of New York state, to wit: N.Y. Educ. Law Sections 6530(8), having a psychiatric condition which impairs the licensee's ability to practice; and Section 6530(29), violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law.

FIRST SPECIFICATION
HAVING BEEN FOUND GUILTY OF
PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1997) 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 as alleged in the facts of the following:

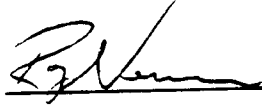
1. The facts in paragraphs A, B, C, and D.

SECOND SPECIFICATION
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1997) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state as alleged in the facts of the following:

2. The facts in paragraphs A, B, C, and D.

DATED: March 4, 1997
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct