



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

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

Karen Schimke  
Executive Deputy Commissioner

May 14, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Daniel A. Guenzburger, Esq.  
Assistant Counsel  
New York State Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001

James Nemia, Esq.  
Foley & Nemia  
POB 3298 - Church St Station  
New York, New York 10008

Albert Greenwood, M.D.

Redacted Address

RE: In the Matter of Albert Greenwood, M.D.

Dear Mr. Guenzburger, Mr. Nemia and Dr. Greenwood:

Enclosed please find the Determination and Order (No. 96-116) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must 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 all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

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

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Empire State Plaza  
Corning Tower, Room 2503  
Albany, New York 12237-0030

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

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

Sincerely,

Redacted Signature

Tyhone T. Butler, Director  
Bureau of Adjudication

TTB:rlw  
Enclosure

**COPY**

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

-----X  
IN THE MATTER : DETERMINATION  
OF :  
ALBERT GREENWOOD, M.D. : ORDER  
-----X

BPMC-96-116

A Notice of Referral Proceeding and Statement of Charges, both dated December 19, 1995, were served upon the Respondent, Albert Greenwood, M.D. **STEPHEN A. GETTINGER, M.D. (Chair), REV. JAMES H. MILLER, and LAXMI V. BAXI, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Daniel Guenzburger, Esq., Assistant Counsel. The Respondent appeared by Foley & Nemia, James Nemia, Esq., of Counsel. A hearing was held on May 2, 1996. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

### STATEMENT OF CASE

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

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(e). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

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

1. Albert Greenwood, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on March 1,

1966 by the issuance of license number 096143 by the New York State Education Department. (Pet. Ex. #2).

2. On June 13, 1995, upon consent of Respondent, the Commissioner of Health of the State of New York found that Respondent violated Public Health Law §3335(3) and 10 NYCRR §80.100(a). A practitioner violates Public Health Law §3335(3) if he issues a prescription for a quantity of controlled substances which would exceed a thirty day supply, if the controlled substances were used in accordance with the directions for use specified in the prescription. A practitioner violates 10 NYCRR §80.100(a) by failing to maintain a record of transactions concerning controlled substances for a period of five years from the date of the transaction. (Pet. Ex. #3).

3. The Commissioner found that during the period from May 24, 1993 through July 8, 1993 and from January 26, 1994 through July 19, 1994, Respondent issued 34 prescriptions for 40 tablets of Tylenol #4 with codeine, a controlled substance. Each of the 34 prescriptions could be refilled twice. The Commissioner further found that Respondent improperly authorized more than a thirty day supply of Tylenol #4, by writing a prescription, which if used in accordance with the directions on the prescription, would result in the patient receiving more than a 30 day supply of the medication. The Commissioner also found that on or about and between May 24, 1993 and July 19, 1994, Respondent failed to maintain a record for Patient J.M. which would justify treatment with Tylenol #4. (Pet. Ex. #3 ).

4. The Commissioner imposed a \$3,000.00 fine. Said penalty was suspended on condition that Respondent commit no further violations of Article 33 of the Public Health Law for a two year period from the effective date of the order. (Pet. Ex. #3).

#### CONCLUSIONS OF LAW

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

The Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent entered into a consent agreement by which he admitted, and the Commissioner of Health, found, that Respondent violated certain provisions of Article 33 of the Public Health Law. Education Law §6530(9)(e) defines professional misconduct as "Having been found by the commissioner of health to be in violation of article thirty-three of the public health law". Accordingly, the Committee voted to sustain the specification of professional misconduct set forth in the Statement of Charges.

#### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent should receive a censure and reprimand in satisfaction of the charge which has been sustained. This

determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

There is no doubt that the patient involved in the underlying conduct suffered significant pain due to the extensive injuries which he sustained. Further, there is no evidence that Respondent's prescription practices regarding this patient represent anything other than a isolated instance. Nevertheless, the Hearing Committee is concerned about the fact that Respondent acknowledged writing prescriptions in such a way as to hide the large amount of controlled substances which were being prescribed for the patient - a clear attempt to circumvent the safeguards against over-prescribing of potentially addictive drugs. In addition, the Committee did not find Respondent's explanation for the lack of records for the patient to be credible.

Respondent testified that his records were in disarray because he was moving around the country, serving as a *locum tenens* physician, and that he had massive amounts of documentation concerning a number of private lawsuits which are in progress. He testified that as a result, the records were not readily available. However, he acknowledged that he had returned to New York and re-established a small practice here at the time that the subject prescriptions were issued. Accordingly, the Committee did not find his explanations persuasive.

The Hearing Committee unanimously believes that some sanction is necessary, in order to make clear to Respondent that



his responsibility to prescribe controlled substances appropriately and to maintain adequate records is not obviated by any pre-occupation with private litigation. Accordingly, the Committee accepted the Department's recommendation that Respondent receive a censure and reprimand. The Committee declined to impose a fine, insofar as there is no evidence to suggest any wrongful financial gain on the part of Respondent.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is

SUSTAINED;

2. Respondent shall and does hereby receive a CENSURE AND REPRIMAND;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York  
May 11, 1996

Redacted Signature

~~STEPHEN A. GETTINGER~~ M.D. (CHAIR)

REV. JAMES H. MILLER  
LAXMI V. BAXI, M.D.

(ll)

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

Albert Greenwood, M.D.

Redacted Address

James Nemia, Esq.  
Foley & Nemia  
P.O. Box 3298 - Church Street Station  
New York, New York 10008

APPENDIX I

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

IN THE MATTER  
OF  
ALBERT GREENWOOD, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: ALBERT GREENWOOD, M.D.  
Redacted Address



PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on January 31, 1996, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

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

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would

not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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: New York, New York  
*December 19, 1995*

Redacted Signature

  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

DANIEL GUENZBURGER  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2617

IN THE MATTER  
OF  
ALBERT LEON GREENWOOD, M.D.

STATEMENT  
OF  
CHARGES

ALBERT LEON GREENWOOD, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 1, 1966, by the issuance of license number 096143 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about June 13, 1995, upon consent of Respondent, the Commissioner of the New York State Department of Health found that the Respondent violated Public Health Law §3335(3) (McKinney 1993) and New York State Department of Health Regulation 10 NYCRR 80.100(a)(1977). A practitioner violates Public §3335(3) if he issues a prescription for a quantity of controlled substances which would exceed a thirty day supply, if the controlled substances were used in accordance with the directions for use specified in the prescription. A practitioner violates New York State Department of Health Regulation 80.100(a) by failing to maintain a record of transactions concerning controlled substances within five years of the date of the transaction.

The Commissioner found that Respondent issued 34 prescriptions for 40 Tylenol #4 with codeine, a controlled substance. Each of the 34 prescriptions could be refilled twice. The Respondent improperly authorized more than a thirty day supply of Tylenol #4, by writing a prescription which if used in



accordance with the directions on the prescription, would result in the patient receiving more than a 30 day supply of the medication. The Commissioner also found that on or about and between May 24, 1993 and July 19, 1994, the Respondent failed to maintain a record for a patient which would justify treatment with Tylenol with Codeine #4 .

The Commissioner imposed a \$3,000.00 fine, which penalty was suspended on condition that Respondent commit no further violations of Article 33 of the Public Health Law for a 2 year period from the effective date of the order.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**


#### **HAVING BEEN FOUND IN VIOLATION OF ARTICLE 33 OF THE PUBLIC HEALTH LAW**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(e)(McKinney Supp.) 1995 by having been found by the commissioner of health to be in violation of article thirty-three of the public health law as alleged in the facts of the following:

1. Paragraph A.

DATED: December / Y , 1995  
New York, New York

Redacted Signature

  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct