

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

May 8, 1991

Marc Hirsch, Physician
124 Lucas Avenue
Kingston, N.Y. 12401

Re: License No. 115965

Dear Dr. Hirsch:

Enclosed please find Commissioner's Order No. 11661. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

GUSTAVE MARTINE
Supervisor

DJK/GM/er

CERTIFIED MAIL - RRR

cc:

RECEIVED

MAY 14 1991
9113-100-0066
Office of Professional
Medical Conduct

REPORT OF THE
REGENTS REVIEW COMMITTEE

MARC HIRSCH

CALENDAR NO. 11661



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

MARC HIRSCH

No. 11661

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

MARC HIRSCH, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On January 25, 1991, the scheduled date of our hearing, respondent appeared before us in person and elected to proceed without an attorney. David W. Smith, Esq. represented the New York State Department of Health.

Petitioner's written recommendation as to the penalty to be imposed, should respondent be found guilty, was a five year suspension of respondent's license, stayed, and a five year period of probation.

Respondent's written recommendation as to the penalty to be imposed, should respondent be found guilty, was a three year period of probation within a training program.

MARC HIRSCH (11661)

We have reviewed the record in this matter; and our unanimous findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed follow:

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department in 1973.
2. On June 11, 1980, the Medical Board of California ordered that Proposed Decision No. D-2460 dated May 9, 1980, issued by an Administrative Law Judge after an administrative disciplinary hearing against respondent in that state, be adopted by the Board of Medical Quality Assurance of the State of California as its Decision. Pursuant to the order, the Decision became effective on July 11, 1980.
3. In accordance with the above order, respondent has been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state, which conduct would, if committed in New York State, constitute professional misconduct under §6509(2) of the Education Law of the State of New York - practicing the profession of medicine with gross negligence and with negligence on more than one occasion, as set forth in the statement of charges and the record herein.

MARC HIRSCH (11661)

DETERMINATION AS TO GUILT

The charge, annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven by a preponderance of the evidence to the extent hereinabove indicated and respondent is guilty thereof to that extent.

We do not recommend that respondent be found guilty of the specification as it relates to unprofessional conduct under Rule 29.2(a)(3), since that rule did not become effective until October, 1, 1977, a later date than any of the conduct at issue herein. Nor do we recommend that respondent be found guilty of the specification as it relates to gross incompetence and incompetence on more than one occasion, there being no statutory sections in California cited by petitioner having equivalent elements to the New York sections, as required by Dragon v. Commissioner of Education, 142 A.D.2d 846, 538 N.Y.S.2d 896 (1988).

Finally, we note that we are aware that New York Education Law §6509(5)(b), the basis for the charge herein, did not become effective until July 1, 1980. We conclude, however, that, for purposes of establishing guilt of the charge thereunder, the operative date for the California Decision is July 11, 1980, not June 11, 1980, since the former was the date on which the California Decision became effective.

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RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED

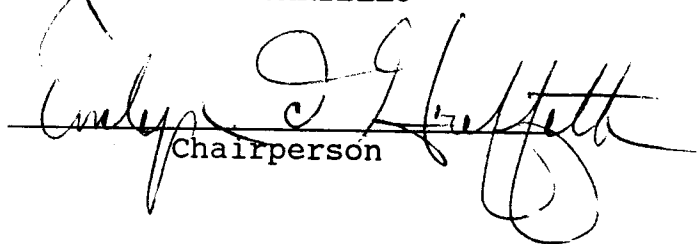
Respondent's license to practice as a physician in the State of New York be suspended for five years upon the charge of which respondent has been found guilty, as aforesaid, and that execution of said suspension be stayed at which time respondent be placed on probation for a period of five years under the terms set forth in the Exhibit annexed hereto, made a part hereof, and marked as Exhibit "B", which include monitoring of respondent's practice and courses of training in pharmacology and recordkeeping.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO


Chairperson

Dated:

4/3/91

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

-----X

IN THE MATTER : STATEMENT
OF : OF
MARC HIRSCH, M.D. : CHARGES

-----X

MARC HIRSCH, M.D., Respondent, was authorized to practice medicine in New York State on April 8, 1973 by the issuance of license number 115965 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in the State of New York. Respondent was last registered from 167 B. Heritage Hills Drive, Somers, N.Y. 10589.

SPECIFICATION

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law Section 6509(5)(b) (McKinney 1985), by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state when the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of the State of New York in that:

By Decision of the California Division of Medical Quality, Board of Medical Quality Assurance, ("BMQA"), dated July 11, 1980 the Physician's and Surgeon's Certificate No. 6-19223 ("Certificate") held by Respondent in the State of California was revoked thereby prohibiting him from the further practice of medicine in such state. Thereafter, by Decision dated May 10, 1985 BMQA refused to reinstate Respondent's Certificate.

The revocation of Respondent's license to practice was based on findings by BMQA that between 1974 and 1977, Respondent had treated twenty-two (22) different patients in a negligent, grossly negligent and incompetent manner in that he prescribed, either excessively or inappropriately, substances such as Valium, Ritalin, Percodan, Secobarbital and Demerol. Such revocation was also based on findings that Respondent failed to keep proper medical records as required by the laws of California.

The decision of BMQA in 1985 not to reinstate Respondent's license was based on findings that since the time of the revocation in 1980, Respondent had not demonstrated either sufficient continuing medical education or sufficient understanding of drug interaction and his original prescribing practices.

Respondent's acts as found by BMQA would constitute professional misconduct in New York State as defined in N.Y.

Educ. Law Sections 6509(2) (McKinney 1985), (Practicing with gross incompetence); (Practicing with gross negligence on a particular occasion); (Practicing with negligence on more than one occasion); (Practicing with incompetence on more than one occasion); and 6509(9) and 8 N.Y.C.R.R. Section 29.2(a)(3) (1989) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of patient.)

DATED: New York, New York
January 2, 1991



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct

EXHIBIT "B"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

MARC HIRSCH

CALENDAR NO. 11661

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:
 - a. That respondent, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing respondent's profession;
 - b. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
 - c. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and
 - d. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with

MARC HIRSCH (11661)

the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

2. That respondent shall, at respondent's expense, enroll in and diligently pursue a course of training in pharmacology, said course of training to be selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct and to be satisfactorily completed during the period of probation, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct;
3. That respondent shall, at respondent's expense, enroll in and diligently pursue a course of training in recordkeeping, said course of training to be selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct and to be satisfactorily completed during the period of probation, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct;
4. That, during the first three years of probation, respondent shall successfully complete the residency program in which he is presently enrolled at the Mid-Hudson Family Health Services Institute, Kingston Family Practice Center, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct and that, after receipt of said proof, the Director of the Office of Professional Medical Conduct, upon being satisfied that respondent has successfully completed said program, shall notify respondent of the termination of this term of probation and the effective date thereof;
5. That, upon termination of the term of probation set forth in paragraph 4 hereof, and during the remaining period of probation, respondent shall have respondent's practice monitored, at respondent's expense, as follows:
 - a. That said monitoring shall be by a physician selected by respondent and previously approved,

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in writing, by the Director of the Office of Professional Medical Conduct;

- b. That respondent shall be subject to random selections and reviews by said monitor of respondent's patient records, office records and hospital charts in regard to respondent's practice, including those relating to the prescribing of medications, and respondent shall also be required to make such records available to said monitor at any time requested by said monitor; and
 - c. That said monitor shall submit a report, once every four months, regarding the above-mentioned monitoring of respondent's practice to the Director of the Office of Professional Medical Conduct;
6. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

EXHIBIT "B"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

MARC HIRSCH

CALENDAR NO. 11661

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 - a. That respondent, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing respondent's profession;
 - b. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
 - c. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and
 - d. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with

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2. That respondent shall, at respondent's expense, enroll in and diligently pursue a course of training in pharmacology, said course of training to be selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct and to be satisfactorily completed during the period of probation, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct;
3. That respondent shall, at respondent's expense, enroll in and diligently pursue a course of training in recordkeeping, said course of training to be selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct and to be satisfactorily completed during the period of probation, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct;
4. That, during the first three years of probation, respondent shall successfully complete the residency program in which he is presently enrolled at the Mid-Hudson Family Health Services Institute, Kingston Family Practice Center, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct and that, after receipt of said proof, the Director of the Office of Professional Medical Conduct, upon being satisfied that respondent has successfully completed said program, shall notify respondent of the termination of this term of probation and the effective date thereof;
5. That, upon termination of the term of probation set forth in paragraph 4 hereof, and during the remaining period of probation, respondent shall have respondent's practice monitored, at respondent's expense, as follows:
 - a. That said monitoring shall be by a physician selected by respondent and previously approved,

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in writing, by the Director of the Office of Professional Medical Conduct;

- b. That respondent shall be subject to random selections and reviews by said monitor of respondent's patient records, office records and hospital charts in regard to respondent's practice, including those relating to the prescribing of medications, and respondent shall also be required to make such records available to said monitor at any time requested by said monitor; and
 - c. That said monitor shall submit a report, once every four months, regarding the above-mentioned monitoring of respondent's practice to the Director of the Office of Professional Medical Conduct;
6. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

**ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK**

MARC HIRSCH

CALENDAR NO. 11661



The University of the State of New York

IN THE MATTER

OF

MARC HIRSCH
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 11661

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 11661, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (April 26, 1991): That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of MARC HIRSCH, respondent, be accepted; that respondent is guilty of the charge, to the extent indicated by the Regents Review Committee, by a preponderance of the evidence; that respondent's license and registration to practice as a physician in the State of New York be suspended for five years upon the charge of which respondent has been found guilty, as aforesaid; that execution of said suspension be stayed at which time respondent be placed on probation for a period of five years under the terms prescribed by the Regents Review Committee which include monitoring of respondent's practice and courses of training in pharmacology and recordkeeping; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

MARC HIRSCH (11661)

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 30th day of

April, 1991.
Thomas Sobol

Commissioner of Education