

DOH 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

September 14, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Stein, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

Avelino Samson Josef, M.D.
1741 Pacific Avenue
Long Beach, California 90813

RE: In the Matter of Avelino Samson Josef, M.D.

Effective Date: 09/21/95

RECEIVED
SEP 14 1995
OFFICE OF
MEDICAL CONDUCT

Dear Mr. Stein and Dr. Josef:

Enclosed please find the Determination and Order (No. 95-224) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

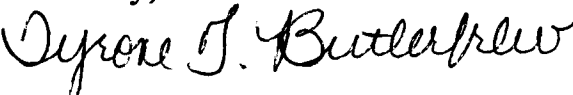
The notice of review served on the Administrative Review Board should be forwarded to:

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,

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**

**IN THE MATTER
OF
AVELINO SAMSON JOSEF, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-95-224

A Notice of Hearing and Statement of Charges, each dated June 19, 1995, was served upon the Respondent **AVELINO SAMSON JOSEPH, M.D.** on June 30, 1995. **WILLIAM K. MAJOR, M.D.**, Chairperson, **ALLAN GIBOFSKY, M.D.**, and **ROBIN N. BUSKEY, R.P.A.**, 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. **JEFFREY ARMON, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. A hearing was held on July 28, 1995. The Department of Health appeared by **PAUL STEIN, ESQ.**, Associate Counsel. The Respondent did not appear. 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

The case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charge 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). 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 parenthesis 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. Avelino Samson Josef, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on April 5, 1974 by the issuance of license number 119730 by the New York Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.
2. On or about March 7, 1994, the Medical Board of California issued an Accusation alleging that Respondent, while providing medical treatment to a patient, had engaged in acts of incompetence, in violation of section 2234, subsection (d) of the California Business and Professions Code and had engaged in repeated negligent acts in violation of section 2234, subsection (c) of the California Business and Professions Code.
3. On or about November 2, 1994, the California Medical Board and Respondent entered into a Stipulated Settlement and Disciplinary Order in which Respondent admitted the truth of each and every allegation in said Accusation. Pursuant to the terms of the Stipulated

Settlement and Disciplinary Order, Respondent's physician and surgeon's certificate was revoked, with the revocation being stayed and Respondent placed on probation for five years, in accordance with certain terms and conditions, including:

- a. Actual suspension for a sixty-day period divided into two thirty-day intervals;
 - b. the passing of an oral clinical examination in general medicine, and a written examination at the option of the Medical Board;
 - c. 40 hours of approved continuing medical education for each year of probation, in addition to that needed for re-licensure;
 - d. a practice monitor who shall provide periodic written reports; and
 - e. the payment of \$4,200 in costs.
4. Respondent was personally served with the Notice of Hearing and Statement of Charges on June 30, 1995. (Ex. 1)

CONCLUSIONS

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 Committee concluded that Respondent had been properly served with the Notice of Hearing and Statement of Charges based upon the Affidavit of Personal Service (Ex. 1), and that it had obtained jurisdiction over Respondent in this matter as a result.

The Committee determined that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Medical Board of California took disciplinary action against Respondent's license to practice medicine in that State. The basis for such action was conduct which, had it been committed in New York State, would have constituted

professional misconduct pursuant to New York Education Law Section 6530(3) and/or (5) [practice of the profession negligently on more than one occasion and/or practice of the profession with incompetence on more than one occasion]. Therefore, the Hearing Committee voted to sustain the Specification of professional misconduct contained within 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's license to practice medicine in New York State should be revoked. 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.

In reaching its determination to revoke Respondent's license to practice medicine in New York State, the Committee considered the seriousness of the underlying acts of misconduct committed by Respondent in his practice of medicine in California. The Committee felt that his acts of negligence and incompetence in his treatment of the patient were so egregious as to make a license revocation the only appropriate penalty. The Committee also noted that the Respondent is not currently registered to practice medicine in New York and that he made no indication of a desire to retain his New York license by appearing or providing evidence on his behalf at this proceeding, notwithstanding his knowledge of the pendency of this proceeding.

ORDER

Based upon 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**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.
3. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

Dated: Albany, New York

Sept 12 1995


WILLIAM K. MAJOR, M.D. (Chair)

**ALLAN GIBOFSKY, M.D.
ROBIN N. BUSKEY, R.P.A.**

**TO: Paul Stein, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001**

**Avelino Samson Joseph, M.D.
1741 Pacific Avenue
Long Beach, California 90813**

APPENDIX I

IN THE MATTER
OF
AVELINO SAMSON JOSEF, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: AVELINO SAMSON JOSEF, M.D.
1741 Pacific Avenue
Long Beach, CA 90813

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 July 28, 1995, 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.

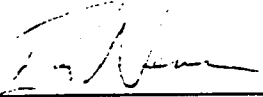
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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
June 17, 1995



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Paul Stein
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2605

NEW YORK STATE DEPARTMENT OF HEALTH 1995

IN THE MATTER
OF
AVELINO SAMSON JOSEF, M.D.

STATEMENT
OF
CHARGES

AVELINO SAMSON JOSEF, M.D., the Respondent, was authorized to practice medicine in New York State on April 5, 1974 by the issuance of license number 119730 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. 1. On or about March 7, 1994, the Medical Board of California (hereinafter referred to as the "Medical Board") issued an Accusation (No. D-5684) alleging that Respondent, while providing medical treatment to a patient, had engaged in acts of incompetence, in violation of section 2234, subsection (d) of the California Business and Professions Code and had engaged in repeated negligent acts in violation of section 2234, subsection (c) of the California Business and Professions Code.
2. On or about November 2, 1994, the Medical Board and Respondent entered into a Stipulated Settlement and Disciplinary Order in which Respondent admitted the truth of each and every allegation in Accusation No. D-5684.
3. Pursuant to the terms of the Stipulated Settlement and Disciplinary Order, Respondent's physician and surgeon's

certificate was revoked, with the revocation being stayed and Respondent placed on probation for five years, on various terms and conditions, including:

- actual suspension for a sixty-day period divided into two thirty-day intervals;
- the passing of an oral clinical examination in general medicine, and a written examination at the option of the Medical Board;
- 40 hours of approved continuing medical education for each year of probation, in addition to that needed for re-licensure;
- a practice monitor who shall provide periodic written reports; and
- the payment of \$4,200 in costs.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN BY A DULY AUTHORIZED PROFESSIONAL DISCIPLINARY AGENCY OF ANOTHER STATE

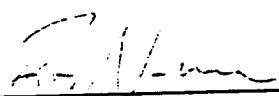
Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law sec. 6530(9)(d) (McKinney Supp. 1995), in that he had his license to practice medicine revoked, suspended or had other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely:

- a. Practicing the profession with incompetence on more than one occasion. (N.Y. Educ. Law sec. 6530 (5) (McKinney Supp. 1995)),
- b. Practicing the profession with negligence on more than one occasion. (N.Y. Educ. Law sec. 6530 (3) (McKinney Supp. 1995)),

as Petitioner specifically alleges:

- 1. The facts in Paragraph A1 through A3.

Dated: New York, New York
June 17, 1995



 ROY NEMERSON
 Deputy Counsel
 Bureau of Professional
 Medical Conduct