



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner

Paula Wilson  
Executive Deputy Commissioner

September 23, 1994

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Catherine Cholakis, Esq.  
Assistant Counsel  
NYS Department of Health  
Corning Tower - Room 2429  
Albany, New York 12237

SEP 23 1994

Donald A. Goldman, Esq.  
McDermott, Will & Emery  
1211 Avenue of the Americas  
New York, New York 10036

Anthony Lewis Barnert, M.D.  
23861 West McBean Parkway, Suite 8B  
Valencia, California 91355

**RE: In the Matter of Anthony Lewis Barnert, M.D.**

Dear Ms. Cholakis, Dr. Barnert and Mr. Goldman :

Enclosed please find the Determination and Order (No. 94-194) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he 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.

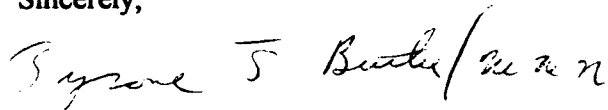
The notice of review served on the Administrative Review Board should be forwarded to:

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 cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mmn

Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
ANTHONY LEWIS BARNERT, M.D. : ORDER  
-----X

NO. BPMC-94-194

A Notice of Referral Proceeding and Statement of Charges were served upon the Respondent, Anthony Lewis Barnert, M.D. THERESE G. LYNCH, M.D. (Chair), SISTER MARY THERESA MURPHY, and MOHAMMAD GHAZI-MOGHADAM, 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 Catherine Cholakis, Esq., Assistant Counsel. The Respondent appeared by McDermott, Will & Emery, Donald A. Goldman, Esq., of Counsel. A hearing was held on September 13, 1994. 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)(b) and §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 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. Anthony Lewis Barnert, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York

State on August 31, 1971 by the issuance of license number 109703 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in New York State. (Pet. Ex. #3).

2. The Medical Board of California (hereinafter "California Board"), by Decision dated June 4, 1993, found Respondent guilty of two counts of gross negligence and revoked his license to practice medicine in the state of California. The California Board further found that Respondent was suffering from Bipolar I Disorder, a psychiatric condition which lasts for life and cannot be cured but can be managed with appropriate medication. Finding that "it is more likely than not that Respondent's bipolar disorder adversely affected his unprofessional conduct", the California Board stayed said revocation and placed Respondent on probation for life. (Pet. Ex. #4).

3. The California Board found gross negligence in Respondent's treatment of a patient who had been admitted to the hospital and began to complain of chest pain. Despite telephone conversations with hospital nurses, Respondent failed to transfer this patient to the intensive care unit for eight hours and forty-five minutes. The California Board determined that Respondent's failure to timely transfer the patient to the intensive care unit constituted gross negligence. Respondent further failed to visit the patient for nine hours and twenty-five minutes. The patient eventually went into cardiogenic shock and died. The California Board determined that Respondent's

failure to timely visit the patient also constituted gross negligence. (Pet. Ex. #4).

4. The terms of probation imposed by the California Board require, *inter alia*, that Respondent continue to comply with, and undergo psycho-pharmacological treatment for bipolar disorder. Respondent is also required to undergo periodic psychiatric evaluations and undergo and continue psychotherapy. In addition, Respondent's office and medical staff, spouse and other family members are required to submit periodic reports to the California Board regarding his behavior in the office and at home. (Pet. Ex. #4).

#### 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's medical license was revoked by the California Board following an adjudicatory hearing at which it was determined that Respondent was grossly negligent in his medical care and treatment of a patient. The Committee further concluded that Respondent's conduct would, if committed in New York State, constitute professional misconduct under New York Education Law §6530(4) [gross negligence]; §6530(7) [practicing the profession while impaired by mental disability]; and §6530(8) [having a psychiatric condition which

impairs the licensee's ability to practice]. As a result, the Hearing Committee unanimously voted to sustain the First and Second Specifications of professional misconduct.

#### 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.

Respondent suffers from bipolar disorder, a serious psychiatric condition. The disorder "impairs judgment and insight, depending upon the severity of the impairment, which waxes and wanes from hour to hour and day to day." (See, Petitioner's Exhibit #4, Finding of Fact #19). The California Board determined that, notwithstanding Respondent's condition, he could safely practice medicine, albeit under extremely rigorous restrictions. Because of the risk of a "break through incident" during which the medication temporarily has no effect, the California Board has required that Respondent's office staff and family make regular reports to the California Board concerning Respondent's behavior for the rest of his life. The Board also placed numerous other conditions of probation on Respondent's ability to practice. These conditions will also be in effect for

the rest of Respondent's life.

The Hearing Committee is sympathetic to Respondent's plight. However, given the fact that Respondent does not practice in New York State, and has not expressed any intent to practice medicine here, the imposition of terms of probation similar to those enacted by the California Board would place an onerous, if not impossible burden upon the resources of the Office of Professional Medical Conduct. It would be impossible to monitor Respondent's compliance with such terms of probation in any meaningful fashion over the course of his lifetime.

The Hearing Committee unanimously determined that under the totality of the circumstances, revocation is the only appropriate sanction. In the event that Respondent ever decides to return to New York state and seek restoration of his New York medical license, he will have the opportunity to demonstrate to the Board of Regents the current status of his psychiatric condition. At that time the Regents may impose those restrictions upon Respondent's ability to practice which may be necessary to safeguard the public.





**APPENDIX I**

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

PETITIONER'S  
EXHIBIT

9/13/94 / RECO  
LM

-----X

IN THE MATTER : NOTICE OF  
OF : REFERRAL  
ANTHONY LEWIS BARNERT, M.D. : PROCEEDING

-----X

TO: ANTHONY LEWIS BARNERT, M.D.  
23861 West McBean Parkway  
Suite 8B  
Valencia, California 91355

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 13th day of September, 1994 at 10:00 a.m. in the forenoon of that day at Conference Room E, of the Cultural Education Building, Empire State Plaza, Albany, New York 12237.

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, on or before September 2, 1994.

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 on or before September 2, 1994 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



CATHERINE CHOLAKIS  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2429  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
ANTHONY LEWIS BARNERT, M.D. : CHARGES

-----X

ANTHONY LEWIS BARNERT, M.D., the Respondent, was authorized to practice medicine in New York State on August 31, 1971 by the issuance of license number 109703 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department. Respondent's last known address is 23861 West McBean Parkway, Suite 8B, Valencia, California 91355.

#### FACTUAL ALLEGATIONS

1. The Medical Board of California, by Decision dated June 4, 1993, found Respondent guilty of two counts of gross negligence and revoked his license to practice medicine in the state of California. The California Board further found that Respondent was suffering from Bipolar I Disorder, a condition which lasts for life and cannot be cured but can be managed with appropriate medication. Finding that "it is more likely than not that respondent's bipolar disorder adversely affected

his unprofessional conduct", the Board stayed said revocation, and placed Respondent on probation for life.

2. The California Board found gross negligence in Respondent's treatment of a patient who had been admitted to the hospital and began to complain of chest pain. Despite telephone conversations with hospital nurses, Respondent failed to transfer this patient to the intensive care unit (ICU) for eight hours and forty-five minutes. The California Board found Respondent's failure to timely transfer this patient to the ICU constitutes gross negligence. Respondent further failed to visit said patient for nine hours and twenty-five minutes. The California Board also found that Respondent's failure to visit this patient prior to the passage of nine hours and twenty-five minutes constitutes gross negligence. Said patient eventually went into cardiogenic shock and died.
  
3. The conduct underlying the California Board's imposition of discipline upon Respondent would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(4) (McKinney Supp. 1994) [practicing the profession with gross negligence on a particular occasion], and/or N.Y. Educ. Law §6530(7) (McKinney Supp. 1994) [practicing the profession while impaired by mental disability], and/or



N.Y. Educ. Law §6530(8) [by having a psychiatric condition which impairs the licensee's ability to practice].

**FIRST SPECIFICATION**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1994) as a result of his having been found guilty of 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, in that the Petitioner charges the facts in Paragraphs 1, 2 and 3.

**SECOND SPECIFICATION**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994) by reason of having his license to practice medicine revoked, or having other disciplinary action taken when the conduct resulting in the revocation or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that the Petitioner charges

the facts in Paragraphs 1, 2 and 3.

DATED:                   , 1994  
Albany, New York

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