



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

June 12, 1998

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Yves Jean Manigat, M.D.  
11 Brookwood Drive  
Voorhees, New Jersey 08043

Michele Y. Tong, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

**RE: In the Matter of Yves Jean Manigat, M.D.**

Dear Dr. Manigat and Ms. Tong:

Enclosed please find the Determination and Order (No. BPMC-98-114) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
YVES JEAN MANIGAT, M.D.**

**DETERMINATION  
AND  
ORDER  
BPMC - 98 - 114**

**KENNETH KOWALD (Chair), JAMES EISENKRAFT, M.D. and HILDA RATNER, M.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 **HENRY M. GREENBERG, ESQ.**, General Counsel, by **MICHELE Y. TONG, ESQ.**, Assistant Counsel.

Respondent, **YVES JEAN MANIGAT, M.D.**, did not appear personally, was not represented by the counsel but did submit documents for the Hearing Committee's consideration.

A Hearing was held on June 4, 1998. Evidence was received and examined. A transcript of the proceeding was made. After consideration and review 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 [hereinafter "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 licensee<sup>1</sup> (Respondent).

Respondent, YVES JEAN MANIGAT, M.D. is charged with professional misconduct within the meaning of § 6530(9)(d) of the Education Law of the State of New York ("Education Law"), to wit: "professional misconduct ... by reason of having disciplinary action taken 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 professional misconduct, the Hearing Committee, pursuant to § 6530(9)(d) of the Education Law, must determine: (1) whether Respondent had some disciplinary action taken or instituted against him by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the disciplinary action 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.

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<sup>1</sup> P.H.L. § 230(10)(p), fifth sentence.

## 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 January 8, 1974 by the issuance of license number 118702 by the New York State Education Department (Department's Exhibits # 1 & # 2)<sup>2</sup>.
2. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (legal decision made by the Administrative Officer [Respondent was personally served and had no objection to the personal service effected]); (P.H.L. § 230[10][d]); (Department's Exhibit # 1).
3. The New Jersey State Board of Medical Examiners, through the New Jersey Division of Consumer Affairs, ("New Jersey Board") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of New Jersey (Department's Exhibit # 3).
4. As a result of the filing of a complaint with the New Jersey Board on November 3, 1994, the New Jersey Board issued a Final Decision and Order on December 31 1996 ("1996 Order") (Department's Exhibit # 3).

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<sup>2</sup> refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit) or by Dr. Manigat (Respondent's Exhibit).

5. In the 1996 Order, Respondent was: (1) reprimanded for his 1991 conduct towards a nurse; (2) fined \$2,500; (3) assessed the costs of New Jersey's investigation; (4) required to take and complete a course on universal precautions; and (5) required to complete 200 hours of community service (Department's Exhibit # 3).

6. The State Board of Medicine, through the Commonwealth of Pennsylvania, ("**Pennsylvania Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of Pennsylvania (Department's Exhibit # 4).

7. On August 26, 1997, the Pennsylvania Board approved and adopted a Consent Agreement and Order ("**1997 Order**") (Department's Exhibit # 4).

8. The 1997 Order, based on the 1996 Order from the New Jersey Board, imposed the following penalties on Respondent: (1) public reprimand; (2) civil penalty of \$4,800; and (3) costs of \$200 (Department's Exhibit # 4).

9. Respondent has paid the fines and civil penalties assessed by the New Jersey and Pennsylvania Boards, attended the educational course required and is currently completing the mandated community service (not contested by the Department) (Respondent's Exhibit # A).

### **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 (Paragraphs A., A.1. & B), from the April 21, 1998 Statement of Charges, are SUSTAINED<sup>3</sup>:

The Hearing Committee further concludes, based on the above Factual Conclusion, that the SPECIFICATION OF CHARGES in the Statement of Charges is SUSTAINED<sup>4</sup>.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent had disciplinary action taken or instituted against him by an authorized professional disciplinary agency of the State of New Jersey and by an authorized professional disciplinary agency of the State of Pennsylvania. The Department of Health has also proved, by a preponderance of the evidence, that Respondent's conduct, as alleged in the New Jersey disciplinary action, would, if committed in New York, constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

## DISCUSSION

### **L Professional Misconduct under § 6530(9)(d) of the Education Law.**

The New Jersey Board is a duly authorized professional disciplinary agency. In November 1994, the State of New Jersey, through the New Jersey Board instituted disciplinary action against Respondent.

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<sup>3</sup> The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

<sup>4</sup> It is also noted that although Respondent has submitted documents for the Hearing Committee's consideration, he has not submitted a written answer to the charges and allegations in the Statement of Charges, as required by P.H.L. §230(10)(c). Therefore, in addition to the Hearing Committee's independent determination, the charge and allegations are deemed admitted.



The record herein establishes that Respondent committed professional misconduct pursuant to, at least, §6530(47)<sup>5</sup> of the Education Law of the State of New York.

The course of conduct contained in the 1996 Order (as more fully explained in the initial decision of the Administrative Law Judge, issued October 18, 1996 [Department's Exhibit # 5] ["ALJ Decision"]) establishes the New York equivalent of failure to use scientifically accepted barrier precautions and infection control practices. Respondent's conduct was a deviation of acceptable standards of medical care required of a licensed physician. Therefore, Respondent would be guilty of professional misconduct under the laws of the State of New York.

The Hearing Committee finds that there is insufficient evidence to determine whether Respondent's conduct would have constituted Gross Negligence or Gross Incompetence under New York law. The Hearing Committee cannot conclude that Respondent's acts rose to the level of being egregious or conspicuously bad conduct. The Hearing Committee cannot conclude that Respondent's conduct on this one occasion showed a unmitigated lack of skill or knowledge necessary to practice medicine.

Therefore, based on the evidence presented, a charge (in New York) of practicing the profession with gross negligence, within the meaning of §6530(4) would not be sustained. Similarly, a charge (in New York) of practicing the profession with gross incompetence, within the meaning of §6530(6) would not be sustained.

The Hearing Committee finds and determines that Respondent's conduct in New Jersey, would, if committed in New York State, constitute professional misconduct under §6530(47) of the Education Law and therefore Respondent has violated § 6530(9)(d) of the Education Law, as indicated above.

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<sup>5</sup> Each of the following is professional misconduct... Failure to use scientifically accepted barrier precautions and infection control practices...

## DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent should be Censured and Reprimanded for his conduct in New Jersey.

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 establishes that Respondent's conduct was a violation of New Jersey Laws. The record also establishes that Respondent's act was isolated in nature with a non-existent likelihood of recurrence. This incident occurred in 1991, almost 7 years ago and Respondent had then, and apparently thereafter, continues to have an unblemished record (other than this incident). As indicated by the Decision of the New Jersey ALJ, it was an undisputed fact that Respondent "enjoys an impeccable reputation in the medical community for skill, professional demeanor, character and integrity."

Revocation of Respondent's license (as the Department requested) was carefully considered and found to be grossly excessive under the circumstances presented herein. Respondent has taken a training course and is in the process of completing the public service requirements imposed by New Jersey. The Hearing Committee believes that Respondent has learned his lesson for his temporary "moment of madness", characterized by Respondent himself as "a stupid, foolish or childish thing to do"

The Hearing Committee concludes that if this case had been held in New York, on the facts presented about Respondent's momentary lapse of reason or judgment in his action of sticking the hand of a surgical nurse with a suture needle, Respondent would have been found guilty of misconduct.

The Hearing Committee has also taken into consideration that Respondent has already been punished by the states of New Jersey and Pennsylvania, as well as by the hospital where he was employed at the time of the incident. The sanctions imposed by those 3 separate entities, together with the sanction now being imposed by New York are deemed adequate to balance the need to punish Respondent for his conduct, protect the health and welfare of patients in New York State and send a message that this type of conduct is inappropriate.

All other issues raised by the parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

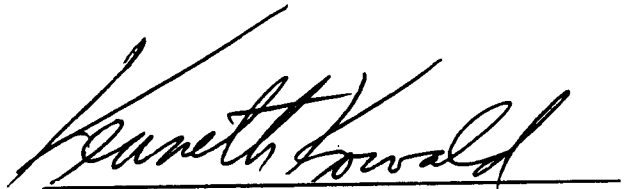
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

**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 is **CENSURED AND REPRIMANDED** for his conduct in New Jersey.

**DATED:** New York, New York  
June // , 1998



**KENNETH KOWALD (Chair),  
JAMES EISENKRAFT, M.D.  
HILDA RATNER, M.D.**

**YVES JEAN MANIGAT, M.D.  
11 Brookwood Drive  
Voorhees, NJ, 08043**

**Michele Y Tong, Esq.  
Assistant 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  
YVES JEAN MANIGAT, M.D.

STATEMENT  
OF  
CHARGES

Yves Jean Manigat, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 8, 1974, by the issuance of license number 118702 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about December 31, 1996, the New Jersey State Board of Medical Examiners issued a Final Decision and Order which reprimanded Respondent, imposed a civil penalty in the amount of two thousand five hundred dollars (\$2,500), ordered Respondent to complete a course on universal precautions and to complete two hundred (200) hours of community service.
1. These sanctions were based upon an incident where Respondent, while performing a surgical procedure, stuck the hand of a surgical nurse twice with the pointed end of a suture needle to demonstrate that the needle was dull. The New Jersey Board found such conduct to be a gross deviation from medical standards.
- B. On or about August 26, 1997, the Pennsylvania State Board of Medicine issued a Consent Order which reprimanded Respondent and imposed a civil penalty in the amount of four thousand eight hundred dollars (\$4,800) based upon action taken by the New Jersey State Board of Medical Examiners.

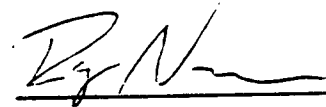
**SPECIFICATION OF CHARGES**

**FIRST AND SECOND SPECIFICATIONS**  
**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1998) 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 (namely N.Y. Educ. Law §6530(4), (6) and (47)) as alleged in the facts of the following:

1. Paragraphs A and A1
2. Paragraph B

DATED: April 21, 1998  
New York, New York



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Michele Y. Tong  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2615