



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*


Dennis P. Whalen  
*Executive Deputy Commissioner*

April 4, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
Paul Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place -4<sup>th</sup> Floor  
433 River Street  
Troy, New York 12180

Charles Platto, Esq.  
8 Beaver Meadow Road  
P.O. Box 1111  
Norwich, Vermont 05055

Jonathan M. Ross, M.D.  


Jonathan M. Ross, M.D.  
Dartmouth Hitchcock Clinic  
Lebanon, New Hampshire 03756

**RE: In the Matter of Jonathan M. Ross, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-82) 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.

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.

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 large black rectangular redaction box covering the signature of Tyrone T. Butler.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

COPY

IN THE MATTER  
OF  
JONATHAN M. ROSS, M.D.

DETERMINATION

AND

ORDER

BPMC 01-82

A Notice of Referral Proceeding and Statement of Charges, both dated November 20, 2000, were served upon the Respondent, **Jonathan M. Ross, M.D.**

**Richard N. Ashley, M.D.**, Chairperson, **Kendrick A. Sears, M.D.**, and **Mr. Irving S. Caplan**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on March 22, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Charles Platto, Esq.**, 8 Beaver Meadow Road, P.O. Box 1111, Norwich, Vermont 05055.

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 THE CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged 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 that 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

### WITNESSES

For the Petitioner:	None.
For the Respondent:	Jonathan M. Ross, M.D., the Respondent
	Paul Gerber, M.D.
	Ms. Betsy Siebeck
	Ms. Marion Pritchard

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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. All Hearing Committee findings were unanimous.

1. Jonathan M. Ross, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1976, by the issuance of license number 127593 by the New York State Education Department (Petitioner's Ex. 4).

2. On April 7, 2000, the New Hampshire Board of Medicine (hereinafter "the New Hampshire Board") entered a settlement agreement (hereinafter "the New Hampshire agreement") with the Respondent. In the New Hampshire agreement, the Respondent's license to practice medicine was suspended for 24 months, 19 months of the suspension was stayed, conditions on the Respondent's practice of medicine were imposed, and a \$5000.00 fine was levied. The New Hampshire Board took this action against the Respondent because he acted unprofessionally by committing boundary violations with a female patient, [REDACTED] and by providing her with psychiatric care despite his lacking the expertise and ability to do so. (Petitioner's Ex. 5).

3. The boundary violations committed by the Respondent consisted of frequent instances of holding hands with [REDACTED] and hugging her, as well as one instance of kissing her on the forehead (Petitioner's Exhibit 5).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State pursuant to:

- New York State Education Law Section 6530(3) (negligence on more than one occasion);
- New York State Education Law Section 6530(5) (incompetence on more than one occasion);
- New York State Education Law Section 6530(24) (performing professional responsibilities that the Respondent knew or had reason to know he was not competent to perform).

## VOTE OF THE HEARING COMMITTEE

### FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or 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 under the laws of New York state.

VOTE: Sustained (3-0)

### SECOND SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(d) by reason of having his license suspended or having 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 suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: Sustained (3-0)

### HEARING COMMITTEE DETERMINATION

The record in this case indicates that on April 7, 2000, the Respondent and the New Hampshire Board entered into the New Hampshire agreement. This agreement is the basis for the New York State professional misconduct charges against the Respondent and the findings of professional misconduct in this Determination and Order.

The documentary evidence (Petitioner's Ex. 5) and the testimony of the Respondent and his witness, Dr. Gerber, indicate that the Respondent exercised exceedingly poor judgment in the treatment of one patient and that this problem existed for over two years. On the other hand, the evidence also indicates that the Respondent's medical practice was

otherwise exemplary, that he completely understands and takes responsibility for what he did wrong and that he has made vigorous efforts to ensure that no similar mistake ever happen again. The Respondent voluntarily suspended his practice for 19 months, successfully completed a three-week program addressing the problem at the Menninger Clinic, sought and participates in long-term psychiatric care and is conscientiously complying with the monitoring program imposed by the New Hampshire Board. The testimony of his witnesses as to the high quality of his character, his sense of responsibility, and the medical care he provides was both laudatory and credible.

Given the evidence in the hearing record, the Hearing Committee is of the opinion that the Respondent is not likely to engage in behavior similar to his behavior with [REDACTED]. However, the problems with his treatment of [REDACTED] were serious enough to require that safeguards be imposed for the safety of New York State patients. These safeguards are described in the Order, below. (The Hearing Committee considered the additional sanctions proposed at the hearing by the Petitioner and decided that they would serve no useful purpose.)

#### ORDER

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent is required either:
  - a. to complete successfully the monitoring program imposed by the New Hampshire agreement, prior to his return to medical practice in New York State, or
  - b. if the Respondent returns to New York State prior to the completion of the New Hampshire monitoring program with the intention of practicing medicine in New York State, to enter into a monitoring program with terms that are substantially equivalent to those of the New Hampshire monitoring program. The duration of the new monitoring program must equal the uncompleted time in the New Hampshire

monitoring program. Such New York State program must be approved by the Petitioner and must be in place prior to the resumption of the Respondent's practice in New York State.

2. Upon resumption of the Respondent's medical practice in New York State, the Respondent is prohibited from conducting physical examinations of female patients unless another woman is present during the examination.

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: Garden City, New York  
April 2, 2001



**Richard N. Ashley, M.D.**  
**Chairperson**

**Kendrick A. Sears, M.D.**  
**Mr. Irving S. Caplan**



APPENDIX I

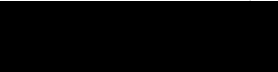
APPENDIX 1

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

IN THE MATTER  
OF  
JONATHAN M. ROSS, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Jonathan M. Ross, M.D.



Jonathan M. Ross, M.D.  
Dartmouth Hitchcock Clinic  
Lebanon, NH 03756

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 13<sup>th</sup> day of December, 2000, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

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 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, Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, 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 December 4<sup>th</sup>, 2000.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before December 4<sup>th</sup>, 2000, 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 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: Albany, New York

*November 20, 2000*



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

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0820

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

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IN THE MATTER  
OF  
JONATHAN M. ROSS, M.D.

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STATEMENT  
OF  
CHARGES

JONATHAN M. ROSS, M.D., the Respondent, was authorized to practice medicine in New York state on July 1, 1976, by the issuance of license number 127593 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about April 7, 2000, the New Hampshire Board of Medicine (hereinafter "New Hampshire Board"), by a Settlement Agreement, (hereinafter "New Hampshire Agreement"), suspended Respondent's license to practice medicine for twenty-four (24) months, all but nineteen (19) months of that suspension were stayed, imposed conditions, and fined him \$5,000.00, based on Respondent's unprofessional treatment and boundary violations with a female patient and continued treatment of that patient despite his lacking the expertise and ability to treat her as a psychiatric patient.

B. The conduct of the Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(5) (incompetence on more than one occasion);
3. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations);
4. New York Education Law §6530(20) (moral unfitness);

5. New York Education Law §6530(24) (performing professional responsibilities which the Respondent knows or has reason to know that he is not competent to perform); and/or

6. New York Education Law §6530(44) (in the practice of psychiatry, any physical contact of a sexual nature between licensee and patient).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or 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 under the laws of New York state, in that Petitioner charges:

1. The facts in paragraphs A and/or B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by reason of having his license suspended or having 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 suspension or other disciplinary action, would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *November 20*, 2000  
Albany, New York



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