



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

July 9, 1996

Karen Schimke  
Executive Deputy Commissioner

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jan A. Salzberg, M.D.  
Zephyr Hills Correctional Inst.  
2739 Gall Boulevard  
Zephyr Hills, Florida 33541

Harry L. Brown, Esq.  
32 Court Street  
Brooklyn, New York 11201

Silvia P. Finkelstein, Esq.  
Associate Counsel  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Effective Date: 07/16/96

RE: In the Matter of Jan A. Salzberg, M.D.

Dear Dr. Salzberg, Mr. Brown and Ms. Finkelstein:

Enclosed please find the Determination and Order (No. 96-159) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

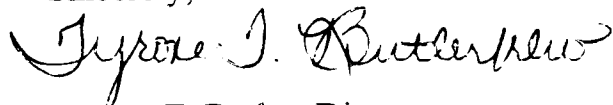
The notice of review served on the Administrative Review Board should be forwarded to:

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, prominent initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:rlw  
Enclosure

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

**COPY**

IN THE MATTER  
OF  
JAN A. SALZBERG, M.D.

DETERMINATION  
AND  
ORDER  
BPMC-96- 159

MICHAEL R. GOLDING, M.D., (Chair), RAFAEL LOPEZ, M.D. and DENNIS P. GARCIA 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 SILVIA P. FINKELSTEIN, ESQ., Associate Counsel.

Respondent, JAN A. SALZBERG, M.D., did not appear personally but was represented by HARRY L. BROWN, ESQ. of counsel.

A Hearing was held on May 21, 1996. Evidence was received and examined. A transcript of the proceeding was made. After consideration 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 [**"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, JAN A. SALZBERG, M.D., is charged with professional misconduct within the meaning of § 6530(9)(b) of the Education Law of the State of New York (**"Education Law"**), to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and § 6530[9][b] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to § 6530(9)(b) of the Education Law, must determine: (1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the findings were based 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 February 15, 1985 by the issuance of license number 161477 by the New York State Education Department (Petitioner's Exhibits # 1 & # 3)<sup>2</sup>

2. Respondent is not currently registered with the New York State Education Department to practice medicine (Petitioner's Exhibit # 3).

3. Wayne Peabody attempted to personally serve on Respondent; a Notice of Referral Proceeding; a Statement of Charges; and Exhibits, on at least 4 separate occasions, in March 1996 (Petitioner's Exhibit # 2).

4. On April 9, 1996, Paula D. Butler mailed, by certified mail and regular mail, a copy of a Notice of Referral Proceeding; a Statement of Charges; and Exhibits to Respondent at his last known address (Petitioner's Exhibit # 2). Respondent acknowledged receipt [T-7]<sup>3</sup>.

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<sup>2</sup> refers to exhibits in evidence submitted by the New York State Department of Health (Department's or Petitioner's Exhibit). Dr. Salzberg did not submit any exhibits.

<sup>3</sup> Numbers in brackets refer to transcript page numbers [T- ].

5 The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (P.H.L. § 230[10][d]).

6 The Agency for Health Care Administration, Board of Medicine (previously the Department of Professional Regulation), of the State of Florida ("**Florida Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of Florida (Petitioner's Exhibit # 4).

7 In July 1991, the Florida Board filed a complaint charging Respondent with having sexual relationships with a patient, under Respondent's care and treatment (Petitioner's Exhibit # 4).

8 On August 16, 1995, the Florida Board filed a Corrected Final Order finding, after hearing, that Respondent, a physician specializing in psychiatry, violated Florida Statutes §§ 458.331(1)(j), (t) and (x)<sup>4</sup> and 458.329<sup>5</sup>, by engaging in repeated sexual encounters with one of his psychiatric patients from January 3, 1989 through October 14, 1989. (Petitioner's Exhibit # 4).

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<sup>4</sup> § 458.331, Florida Statutes, read as follows, (in pertinent part):

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(j) Exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his physician.

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances ...

(x) Violating any provision of this chapter ...

<sup>5</sup> § 458.329, Florida Statutes, read as follows: The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or to attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

9. As a result of the issuance of the August 16, 1995 Corrected Final Order, the Florida Board issued the following penalties: (1) an administrative fine in the sum of five thousand (\$5,000) dollars; and (2) five years of probation under conditions which include restrictions to (a) practicing in a prison setting with only male inmates for a period of 2 years; (b) not treating female patients until he appears before the Florida Board and demonstrates he can practice with skill and safely; and (c) practicing only under the indirect supervision/monitoring of an approved physician of the State of Florida (Petitioner's Exhibit # 4).

10. The Hearing Committee accepts the Findings of Fact of the Florida Board and adopts same as its own Findings of Fact (Petitioner's Exhibit # 4).

11. Respondent had repeated sexual contact with one of his patients, an 18 year old female. Some of these sexual contacts occurred in Respondent's office (Petitioner's Exhibit # 4).

12. Respondent also maintained a social relationship with this patient and her family (Petitioner's Exhibit # 4).

### **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, from the February 12, 1996 Statement of Charges, are SUSTAINED.

The Hearing Committee further concludes, based on the above Factual Conclusion, that the SPECIFICATION OF CHARGES on the second page of the Statement of Charges is SUSTAINED.



The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of improper professional practice and of professional misconduct by the State of Florida and his conduct in Florida would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

**Professional Misconduct under § 6530(9)(b) of the Education Law.**

The Florida Board is a duly authorized professional disciplinary agency. In July 1991, the State of Florida, through the Florida Board instituted disciplinary action against Respondent.

The record establishes that Respondent committed professional misconduct pursuant to, at least, § 6530(44)<sup>6</sup> of the Education Law.

In the August 16, 1995 Corrected Final Order, the facts and conclusions establish that Respondent, while in the practice of psychiatry, had repeated sexual contact with a patient who was 18 years old. The Florida Board found Respondent guilty of violations of Florida Statutes.

Taking the findings of the Florida Board as true, the Hearing Committee finds that the record establishes that Respondent had sexual relations with one of his patients.

Respondent's role of psychiatrist and role of sexual partner were incompatible. The two roles played by Respondent could not co-exist without damaging the therapeutic process (potentially causing harm to the patient) or influencing the therapeutic decisions made by Respondent (also, potentially, causing harm to the patient). The Respondent deviated from accepted psychiatric standards by having sexual relations with his patient.

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<sup>6</sup> Each of the following is professional misconduct... In the practice of psychiatry, (a) any physical contact of a sexual nature between licensee and patient ...

The Hearing Committee finds that Respondent's conduct, if committed in New York State, would constitute professional misconduct under, at least, § 6530(44) of the Education Law.

Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(b) of the Education Law.

### **DETERMINATION**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

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.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. Therefore the Committee is bound by the documentary evidence presented. The presentation of Respondent's attorney did not provide any mitigation to Respondent's malicious and intentional acts.

The record clearly establishes that Respondent committed significant violations of Florida Laws. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented about the pattern of sexual relationships with his young patient, it would have resulted in a unanimous vote for revocation of Respondent's license.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

All other issues raised, except for the constitutional objections, 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 license to practice medicine in the State of New York is hereby **REVOKED**.

**DATED:** New York, New York  
July , 1996

  
**MICHAEL R. GOLDING, M.D., (Chair),**

**RAFAEL LOPEZ, M.D.**  
**DENNIS P. GARCIA**

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Associate Counsel,  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza, 6th Floor  
New York, New York 10001



# APPENDIX I

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

IN THE MATTER  
OF  
JAN A. SALZBERG, M.D.

STATEMENT  
OF  
CHARGES

JAN A. SALZBERG, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 15, 1985, by the issuance of license number 161477 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about August 16, 1995, the Board of Medicine of the State of Florida filed an Order finding, after hearing, that Respondent, a physician specializing in psychiatry, violated Florida Statutes §§ 458.331(1)(j), (t) and (x), by engaging in repeated sexual encounters with one of his psychiatric patients from January 3, 1989 through October 14, 1989. The penalty imposed upon Respondent by the Board of Medicine of the State of Florida consisted of five years probation under conditions which include: (1) Respondent's practice shall be restricted to practicing in a prison setting with only male inmates for a period of 2 years; (2) during the period of probation, Respondent shall not treat female patients unless and until he appears before the Florida Board and demonstrates he can practice with skill and safety; (3) Respondent shall not practice except under the indirect supervision/monitoring of another physician. In addition, Respondent was ordered to pay an administrative fine in the sum of five thousand (\$5,000) dollars. If committed in New York, Respondent's conduct would constitute professional


misconduct under N.Y. Educ. Law §§6530(44) [physical contact of a sexual nature between a psychiatrist and a patient]; (31) [willful physical abuse of a patient]; (3) [negligence on more than one occasion]; (4) [gross negligence] and/or (20) [conduct in the practice of medicine which evidences moral unfitness to practice the profession].

**SPECIFICATION**  
**HAVING BEEN FOUND GUILTY OF**  
**PROFESSIONAL MISCONDUCT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1996) 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 [namely N.Y. Educ. Law §§ 6530(44), (31), (3), (4) and/or (20)] as alleged in the facts of the following:

1. Paragraph A

DATED: February 12, 1996  
New York, New York



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct