



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

September 30, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kimberly A. O'Brien, Esq.
NYS Department of Health
Corning Tower Room 2503
Empire State Plaza
Albany, New York 12237

Jimmie J. Sanders, M.D.
107 West Gorgas Lane
Philadelphia, Pa 19119

RE: In the Matter of Jimmie J. Sanders, M.D.

Dear Ms. O'Brien and Dr. Sanders:

Enclosed please find the Determination and Order (No. 97-238) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

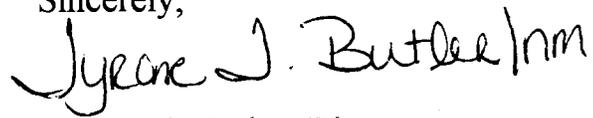
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink that reads "Tyrone T. Butler/nm". The signature is written in a cursive style with a large initial 'T' and 'B'. The letters 'nm' are written at the end of the signature.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

**IN THE MATTER
OF
JIMMIE J. SANDERS, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-97-238

A Notice of Referral Proceedings and Statement of Charges, both dated August 5, 1997, were served upon the Respondent, **JIMMIE SANDERS, M.D.** **STEPHEN W. HORNYAK, M.D.**, Chairperson, **AARON B. STEVENS, M.D.** and **JAMES P. MILSTEIN, ESQ.**, 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. **MICHAEL P. McDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

The Chairman, Stephen W. Hornyak, M.D., recused himself at the beginning of the hearing because the Respondent had been a resident in the same training program with the Chairman.

Aaron B. Stevens, M.D. took Dr. Hornyak's position as Chairman and the Hearing Committee proceeded with two members.

A hearing was held on September 17, 1997, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **KIMBERLY A. O'BRIEN, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf.

WITNESSES

For the Petitioner:

NONE

For the Respondent:

Jimmie J. Sanders, M.D., the Respondent

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

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 Section 6530(9). In such case, 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, 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 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **JIMMIE J. SANDERS, M.D.**, the Respondent, was authorized to practice medicine in New York State on February 2, 1979 by the issuance of license number 137231 by the New York State Education Department. (Pet's. Exs. 1 and 2)

2. By Final Order, dated October 12, 1989, the Florida Department of Professional Regulation, Board of Medicine, (hereinafter "Florida Board"), found that the Respondent knowingly billed for services not performed. The Respondent entered into a stipulated agreement which required him to pay a One Thousand Five Hundred Dollar (\$1,500.00) fine; placed him on a one year probation, and he was given a formal reprimand. (Pet's. Ex. 3)

3. By Final Order, dated June 24, 1996, the "Florida Board" accepted the Respondent's Voluntary Relinquishment of his license to practice medicine in the State of Florida. The Voluntary Relinquishment of License, dated July 28, 1995, states that the Respondent "waives a finding of probable cause" and that the Relinquishment was "executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause." It also provides "that the Respondent agrees never again to apply for licensure as a physician in the State of Florida".

The "Florida Board's" action was based on a failure by the Respondent to obtain informed consent and necessary pre-operative and/or intraoperative GYN consultations for an exploratory laparotomy, appendectomy and right salpingo oophorectomy on a 19 year old patient. (Pet's. Ex. 4)

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous unless otherwise specified)

FIRST SPECIFICATION

GUILTY OF MISCONDUCT IN ANOTHER STATE

The Respondent is charged with professional misconduct within the meaning of New York Education law §6530(9)(b)(McKinney Supp. 1997) in that he was 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 (2-0)

SECOND & THIRD SPECIFICATIONS

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d)(McKinney Supp. 1997) in that he had disciplinary action taken against his license by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: SUSTAINED (2-0)

HEARING COMMITTEE DETERMINATION

The Respondent appeared in person on his own behalf and readily admitted the factual allegations against him.

He testified essentially that the "Florida Board" action against him in 1989 was based on one billing incident, that he was fined One Thousand Five Hundred Dollars (\$1,500.00), given a formal reprimand and put on a one year probation which he successfully completed.

He admitted that he was wrong in not obtaining GYN consults and informed consent for the operation he performed on a 19 year old female in 1994 which resulted in the "Florida Board's" Final Order, dated June 24, 1996, in which he voluntarily relinquished his Florida license and agreed never again to apply for licensure as a physician in the State of Florida. While admitting that he made an error in judgment in not getting the consult and informed consent, he questioned whether this was a sufficient reason to revoke his New York State license.

The Respondent testified that he has not practiced medicine for over a year, that he currently lives in Pennsylvania and is in his second year at law school.

When the Respondent was asked why he wanted to retain his New York license, he testified that he had no intention of returning to New York to practice medicine even though he had just recently applied for registration. He repeated that although he had shown poor judgment in the Florida incident of 1994, he did not think it warranted the revocation of his New York State license. He testified that it was a matter of pride in keeping his New York State license and also from a very practical point, he was concerned that an adverse action against his medical license might possibly have a negative impact on his admission to the bar to practice law in the future.

There is no evidence in the record that the results of the 1994 surgery would have been any different had the Respondent obtained the required pre-operative and/or intraoperative GYN consultations. Also, the Respondent's failure to obtain the patient's informed consent was a procedural matter rather than a substantive error involving medical technique or ability.

After a review of the entire record in this case, the Hearing Committee concludes that the Respondent was negligent in failing to obtain informed consent and pre-operative and/or intraoperative GYN consultations. However, the Hearing Committee further concludes that although he showed poor judgment and had over stepped his bounds, his actions did not rise to the level of gross negligence.

The Hearing Committee determines (2-0) that the appropriate penalty in this case would be **CENSURE AND REPRIMAND.**

Also, if at some future date, the Respondent chooses to return to practice medicine in New York he must:

- * provide ninety days prior notice concerning his return to the Office of Professional Medical Conduct,
- * include with the notice proof that his license remains in good standing in all states where he maintains a license; and,
- * provide information concerning this disciplinary action to any New York hospital at which he applies for privileges and/or employment.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is **CENSURED AND REPRIMANDED.**

2. If, at some future date, the Respondent chooses to return to practice medicine in New York he must:
 - * provide ninety days prior notice concerning his return to the Office of Professional Medical Conduct,
 - * include with the notice proof that his license remains in good standing in all states where he maintains a license; and,
 - * provide information concerning this disciplinary action to any New York hospital at which he applies for privileges and/or employment.

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: Cambridge, New York

Sept. 29 1997


AARON B. STEVENS, M.D.
Chairman

JAMES P. MILSTEIN, ESQ.

APPENDIX I



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

-----X

IN THE MATTER	:	NOTICE OF
OF	:	REFERRAL
JIMMIE SANDERS, M.D.	:	PROCEEDING

-----X

TO: Jimmie Sanders, M.D.
107 West Gorgas Lane
Philadelphia, Pa. 19119

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 17th day of September, 1997 at 10:00 in the forenoon of that day at the Hedley Park Place, 5th 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 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, 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 7, 1997.

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 or 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 September 7, 1997 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
August 5, 1997

Peter D. Van Buren

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

Inquiries should be addressed to:

Kimberly A. O'Brien
Senior Attorney
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2503
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
JIMMIE SANDERS, M.D. : CHARGES

-----X

JIMMIE SANDERS, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 2, 1979 by the issuance of license number 137231 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. By Final Order dated October 12, 1989, the Florida Department of Professional Regulation found that Respondent knowingly billed for services not performed. Respondent entered into a stipulated agreement where Respondent was required to pay a \$1,500.00 fine, placed on a one year probation, and given a formal reprimand.

2. The conduct of which Respondent was found guilty in Florida would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely within the meaning of New York Education Law § 6530(20) (McKinney Supp. 1997) (moral unfitness) and within the meaning of New York Education Law § 6530(21) (McKinney Supp. 1997) (willfully filing

a false report).

3. By Final Order of the State of Florida Agency for Health Care Administration, filed June 27, 1996, Respondent was issued a Voluntary Relinquishment of his license to practice medicine in the State of Florida. The Relinquishment states that the Respondent "waives a finding of probable cause" and that the Relinquishment was "executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause." The cause of action was a failure to obtain informed consent and necessary preoperative or intraoperative consult for complete excision of tube and ovary in a 19 year old patient. Respondent agreed never again to apply for licensure as a physician in the State of Florida.

4. The conduct of which Respondent was found guilty of in Florida would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely within the meaning of New York Education Law § 6530(4) (McKinney Supp. 1997) (practicing the profession with gross negligence) and within the meaning of New York Education Law § 6530(6) (McKinney Supp. 1997) (practicing the profession with gross incompetence).

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

GUILTY OF MISCONDUCT IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9) (b) (McKinney Supp.

1997) in that he was 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 of paragraphs 1 and/or 2.

SECOND & THIRD SPECIFICATIONS
DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9)(d) (McKinney Supp. 1997) in that he had disciplinary action taken against his license by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the 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 of paragraphs 1 and/or 2.
3. The facts of paragraphs 3 and/or 4.

DATED: *August 5,* 1997
Albany, New York

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