



# 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*

December 14, 1994

**OFFICE OF PUBLIC HEALTH**  
Lloyd F. Novick, M.D., M.P.H.  
*Director*  
Diana Jones Ritter  
*Executive Deputy Director*

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David Robert Wesser, M.D.  
141 Huntley Drive  
Ardsley, New York 10502

Robert A. Sklobar, Esq.  
39 West 39th St., Second Floor  
New York, New York 10018

Roy Nemerson, Esq.  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Effective date: 12/21/94

RECEIVED  
DEC 15 1994  
OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

**RE: In the Matter of David Robert Wesser, M.D.**

Dear Dr. Wesser, Mr. Skoblar and Mr. Nemerson :

Enclosed please find the Determination and Order (No. 94-138) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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.

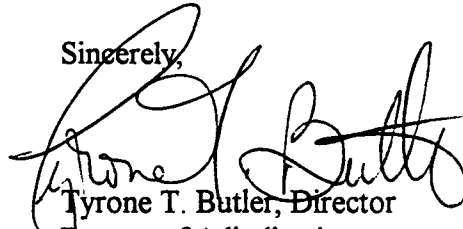
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 438  
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:

Enclosure

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

**IN THE MATTER  
OF  
DAVID ROBERT WESSER, M.D.**

**ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
BPMC 94-138**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.** held deliberations on Saturday, November 5, 1994, to review the Professional Medical Conduct Hearing Committee's (Hearing Committee) August 15, 1994 Determination finding Dr. David Robert Wesser (Respondent) guilty of professional misconduct. The Respondent, through his attorney, Robert A. Skoblar, Esq., requested the review through a notice which the Review Board received on September 14, 1994. James F. Horan served as Administrative Officer to the Review Board. The Respondent failed to submit a brief to the Review Board and made no request for an extension of time for submitting briefs.

**SCOPE OF REVIEW**

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

### **HEARING COMMITTEE DETERMINATION**

The Office of Professional Medical Conduct brought this proceeding pursuant to Public Health Law Section 230 (10) and Education Law Section 6530 (9), which provide for an expedited proceeding when the misconduct charges are based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication concerning conduct which would amount to misconduct if committed in New York. The expedited hearing is limited to determining the nature and severity of the penalty to be imposed upon the licensee.

The Charges in this case stemmed from the Respondent's surrender of his license to practice medicine in the State of New Jersey, after admitting to the truth of allegations constituting gross and repeated malpractice, negligence and incompetence and gross neglect, which endangered the life of a patient.

The Committee determined that the conduct to which the Respondent admitted would constitute professional misconduct in New York. The misconduct concerned liposuction and breast reconstructive surgery which the Respondent performed on a patient, whom the Committee determined to have been seriously and needlessly disfigured. The Committee considered evidence which the Respondent's counsel offered in mitigation, but, noted that their sympathies were with the patient. Based upon the gravity of the Respondent's harmful violations, the Committee voted to revoke the Respondent's license to practice medicine in New York State and to fine the Respondent Ten Thousand (\$10,000.00) Dollars. The Committee stated that they imposed the maximum penalties in this case to reflect the gravity of the Respondent's conduct and to demonstrate that such an appalling pattern of patient despoilment will not be tolerated and will be punished to the full extent of the law in New York.

## REQUESTS FOR REVIEW

As noted previously, the Respondent has not submitted a brief to the Review Board. In the absence of a brief detailing the Respondent's reasons for requesting a review in this case, the Board reviewed whether the Hearing Committee's Determination and Penalty were consistent with the Committee's findings and conclusions and whether the Penalty is appropriate in view of the Respondent's misconduct and in consideration of the evidence which the Respondent's attorney offered in mitigation at the hearing.

## REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below.

The Review Board votes to sustain the Hearing Committee's Determination finding Dr. David Robert Wesser guilty of professional misconduct. The conduct to which the Respondent admitted in the New Jersey Surrender clearly constitutes misconduct in New York.

The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State and to impose a civil penalty of Ten Thousand (\$10,000.00) Dollars. The Review Board agrees with the Hearing Committee that the evidence which the Respondent offered in mitigation (concerning the costs of the disciplinary actions, the Respondent's medical condition and the embarrassment to the Respondent's family) do not outweigh the grave nature of the Respondent's misconduct. The Review Board sees no reason to alter the Hearing Committee's Penalty.

## ORDER

**NOW**, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Review Board sustains the Hearing Committee on Professional Medical Conduct's August 15, 1994 Determination finding Dr. David Robert Wesser guilty of professional misconduct.

2. The Review Board sustains the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State and imposing a civil penalty of Ten Thousand (\$10,000.00) dollars.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

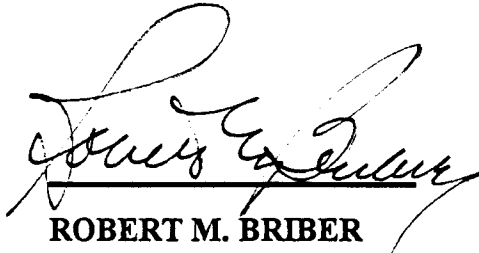
**WILLIAM B. STEWART, M.D.**

**IN THE MATTER OF DAVID ROBERT WESSER, M.D.**

**ROBERT M. BRIBER**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Wesser.

**DATED: Albany, New York**

11/28, 1994



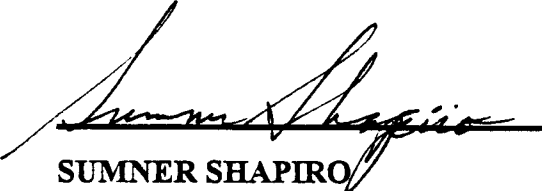
**ROBERT M. BRIBER**

**IN THE MATTER OF DAVID ROBERT WESSER, M.D.**

**SUMNER SHAPIRO**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Wesser.

**DATED: Albany, New York**

Nov. 23, 1994

  
**SUMNER SHAPIRO**




**IN THE MATTER OF DAVID ROBERT WESSER, M.D.**

**WINSTON S. PRICE, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Wesser.

**DATED: Brooklyn, New York**

\_\_\_\_\_, 1994

A handwritten signature in black ink, appearing to read 'W. S. Price', written over a horizontal line.

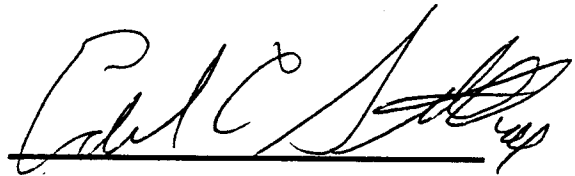
**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF DAVID ROBERT WESSER, M.D.**

**EDWARD C. SINNOTT, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Wesser.

**DATED: Albany, New York**

June 27, 1994

A handwritten signature in black ink, appearing to read "Edward C. Sinnott", written over a horizontal line.

**EDWARD C. SINNOTT, M.D.**

IN THE MATTER OF DAVID ROBERT WESSER, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Wesser.

*Syracuse*  
DATED: Albany, New York  
*23 Nov*, 1994

*William A. Stewart*

WILLIAM A. STEWART, M.D.



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming 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

August 15, 1994

RECEIVED  
AUG 16 1994  
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David Robert Wesser, M.D.  
141 Huntley Drive  
Ardsley, New York 10502

Roy Nemerson, Esq.  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Robert A. Skoblar, Esq.  
39 West 39th St. Second Floor  
New York, New York 10018

**RE: In the Matter of David Robert Wesser, M.D.**

Dear Dr. Wesser, Mr. Skoblar and Mr. Nemerson :

Enclosed please find the Determination and Order (No. 94-138) 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  
Coming 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.

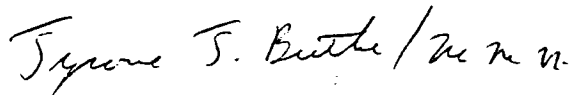
The notice of review served on the Administrative Review Board should be forwarded to: ---

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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mmn

Enclosure

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

IN THE MATTER  
OF  
DAVID ROBERT WESSER, M.D.

DETERMINATION  
AND  
ORDER  
OF THE  
HEARING COMMITTEE  
ORDER NO. ~~BPMC-94-138~~

A Notice of Hearing and Statement of Charges dated October 29, 1993 were served upon DAVID ROBERT WESSER, M.D. (hereinafter referred to as "Respondent"). Respondent requested an adjournment. The said adjournment was granted and the matter was heard on January 20, 1994. Respondent did not appear in person nor by counsel. A decision dated March 23, 1994 was issued by the Committee that heard the matter at that time. In a letter dated April 13, 1994, Respondent, through his attorney, ROBERT A. SKOBLAR, ESQ., informed the Administrative Review Board that he had not received notice of the date of the adjourned proceeding. Consequently, it was decided to provide Respondent with a new hearing before a new Committee of the State Board for Professional Medical Conduct. The new Committee consisted of JOSEPH E. GEARY, M.D., Chairperson, ROBERT J. O'CONNOR, M.D., and MATTHEW M. CAMMEN. Further proceedings were held on May 25, 1994 at the offices of the State Board For Professional Medical Conduct (hereinafter referred to as "the Board"), 5 Penn Plaza, New York, New York. JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as Administrative Officer. The Board appeared by ROY NEMERSON, ESQ., of counsel to Peter J. Millock, Esq., General Counsel. Respondent did not appear in person, but did appear by his attorney.

The hearing was conducted pursuant to §230 (10)(e) of the Public Health Law and §301-307 and §401 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of Section 6530 of the New York Education Law by Respondent. Evidence was received and a transcript of this proceeding was made.

Now, upon consideration of the evidence presented solely in this latest hearing, the

Committee issues its Decision and Order.

### **STATEMENT OF CASE**

The proceeding was brought pursuant to Public Health Law §230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of New York 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 the expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon a licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to New York Education Law §6530(9)(d) based upon the fact that he surrendered his license to a duly authorized professional disciplinary agency of another state. The said surrender was based upon admissions of gross and repeated malpractice, negligence and incompetence and gross neglect which endangered the health or life of a patient. The said conduct upon which the surrender was based would, if committed in New York State, constitute professional misconduct under New York State Law. The charges are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges which is attached to and made a part of this Determination and Order as appendix I.

### **SIGNIFICANT LEGAL RULINGS**

Due to the unusual circumstances of this case, the Administrative Law Judge gave Respondent additional time to make a written submission.

### **FINDINGS OF FACT**

The Committee adopts the factual statement set forth under the First Specification on Pages 1 and 2 of the Statement of Charges (Appendix I) and the factual statement contained on pages 17 and 18 of the Amended Complaint filed in New Jersey, as its findings of fact and incorporates

them herein. Pages 17 and 18 of the Amended Complaint were received as part of Exhibit 3 herein. The Committee makes reference to "Count X (ten)" only of the said complaint. Count X constitutes admissions made by Respondent as part of a consent order upon which this proceeding is based. The pages referenced as "Count X" are attached hereto as appendix II

In addition, the Committee finds one further fact which is deemed relevant: Respondent is not currently registered with the New York State Education Department to practice medicine. Furthermore, Respondent has no present intention to practice medicine in this state.

### CONCLUSIONS

The State has satisfied its burden of proof. Respondent has surrendered his license to practice medicine in the State of New Jersey, upon having admitted the truth of allegations constituting, gross and repeated malpractice, negligence and incompetence and gross neglect which endangered the health or life of a patient. Respondent's New Jersey license has been deemed surrendered with prejudice to his seeking reinstatement at any future time. The conduct upon which the surrender was based would constitute professional misconduct in New York State.

The Committee has carefully considered the mitigating factors presented by Respondent's counsel. These include, but are not limited to the financial hardship placed upon Respondent by the various proceedings, that Respondent is presently disabled from practicing medicine due to a medical condition, and Respondent and his family have been subjected to gross embarrassment by national media coverage of Respondent's case. Nevertheless, as argued by the prosecution, the Committee's sympathies lie not with the perpetrator of the acts sustained but rather with the patient who was very seriously and needlessly disfigured.

After careful review of all the evidence presented by Respondent, including his written submission, the Committee finds that they are in agreement with the initial Committee. The original Committee was so impressed by the gravity of the harmful violations perpetrated by this Respondent that they ordered both revocation of Respondent's license and the imposition of a ten thousand dollar (\$10,000) civil penalty. This Committee believes that only by imposing the



maximum penalties at their disposal, can they truly reflect the gravity of conduct illustrated by this physician. Respondent has been given every opportunity the system affords to practice medicine within acceptable standards. Instead, he has shown a pattern of appalling patient despoilment. By imposing both revocation and a civil penalty, it is hoped that a clear message will be sent which unequivocally communicates that the kind of conduct seen in this case will not be tolerated in this state and will be punished to the full extent of the law.

ORDER

Based upon the foregoing it is hereby ORDERED that,

1. The specifications of professional misconduct contained in the Statement of Charges in this matter be SUSTAINED; and
2. The license of Respondent to practice medicine in this state be REVOKED; and
3. Respondent shall within thirty days of receipt of service of this order, pay a civil penalty of TEN THOUSAND DOLLARS \$10,000).

DATED: Rochester, New York

August 11, 1994

  
JOSEPH E. GEARY, M.D.  
Chairperson

ROBERT J. O'CONNOR, M.D.  
MATTHEW M. CAMMEN

MAIL PAYMENT TO:

New York State Department of Health  
Bureau of Accounts Management  
Coming Tower Building --Room 1245  
Empire State Plaza  
Albany, N.Y. 12237

Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of laws relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees; and non-renewal of permits or licenses (Tax Law, section 171(27); State Finance Law, section 18; CPLR, section 5001; Executive Law, section 32)

TO:  
Roy Nemerson, Esq.  
Deputy Counsel,  
Bureau of Professional Medical Conduct

David Robert Wesser, M.D.  
141 Huntley Dr.  
Ardsley, N.Y. 10502

Robert A. Skoblar, Esq.  
39 West 39th St. Second Floor  
New York, N.Y. 10018

**APPENDIX I**

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
DAVID ROBERT WESSER, M.D. : CHARGES  
-----X

DAVID ROBERT WESSER, M.D., the Respondent, was authorized to practice medicine in New York State on July 15, 1959 by the issuance of license number 082591 by the New York State Education Department.

SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law. Section 6530(9)(d) (McKinney Supp. 1993) by virtue of having surrendered his license to practice medicine in the State of New Jersey, upon having admitted the truth of allegations constituting, inter alia, gross and repeated malpractice, negligence and incompetence and gross neglect which endangered the health or life of a patient. Respondent's New Jersey license has been deemed "...surrendered with prejudice to his seeking reinstatement thereof at any future date." by order of the New Jersey Board of Medical Examiners, dated June 17, 1993. The conduct upon which Respondent's New Jersey license surrender was based would constitute professional

misconduct as defined by N.Y. Educ. Law Section 6530(3), (4), (5),  
and/or (6) (McKinney Supp. 1993).

DATED: New York, New York

OCT 27, 1993



---

CHRIS STERN HYMAN  
Counsel  
Bureau of Professional Medical  
Conduct

**APPENDIX II**

(c) Respondent's surgical revision of T.H.'s temporal hairline created lateral canthal depression.

3. Respondent engaged in professional misconduct by performing surgery on T.H.'s upper eyelid without securing the patient's consent to such surgery.

4. Respondent's poorly executed surgery on T.H. constitutes gross and repeated malpractice, negligence and incompetence pursuant to N.J.S.A. 45:1-21(c), professional misconduct pursuant to N.J.S.A. 45:1-21(e), and gross neglect which endangered the health or life of a patient pursuant to N.J.S.A. 45:9-16(h) and is thus the basis for disciplinary sanction pursuant to N.J.S.A. 45:1-21(h).

COUNT X

1. In August 1985 respondent operated on L.Z. at Yonkers Hospital in New York, performing reduction mammoplasty to down-size pendulous breasts and liposuction to remove fat from her thighs.

2. In June 1986 L.Z. underwent a suction lipectomy of the upper abdomen and the thighs.

3. Respondent's surgeries on L.Z. were performed in a grossly and repeatedly negligent and incompetent manner in that:

(a) following the surgery L.Z. had displacement of the fat in her thighs, resulting in bulges below the incision line.



(b) Following surgery there was extensive scarring of both breasts with inframammary scars on both sides measuring 29cm on both sides. The scars showed an inverted "Y" configuration at the point where there is a connection between the areola and the inframammary fold. Extending medially from the vertical scar was a 10cm scar on the right side parallel to the inframammary scar and a 5 cm scar parallel to the left inframammary scar. Each vertical scar measured 5cm and the scar was 4cm wide on the right side and 3cm on the left side. The areolas showed thick scars all around the periphery which measured 1cm in greatest width. There were multiple stitch marks around the scars of the areola, the vertical incisions and the inframammary incisions.

(c) Following surgery there were 20cm scars on both sides of the groin area. The scars were 2cm wide and irregular, and also showed suture marks. There was an irregular distribution of the fat below those scars.

malpractice.

4. Respondent's surgery on L.Z. constitutes gross and repeated malpractice, negligence and incompetence pursuant to N.J.S.A. 45:1-21(c), professional misconduct pursuant to N.J.S.A. 45:1-21(e), and gross neglect which endangered the health or life of a patient pursuant to N.J.S.A. 45:9-16(h) and are thus the basis for disciplinary sanction pursuant to N.J.S.A. 45:1-21(h).