

**DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH**

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

June 8, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – 4th Floor
Troy, New York 12180

David M. Wurtzel, M.D.
219 Countryside Lane
Mount Laurel, New Jersey 08054

RE: In the Matter of David M. Wurtzel, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-124) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

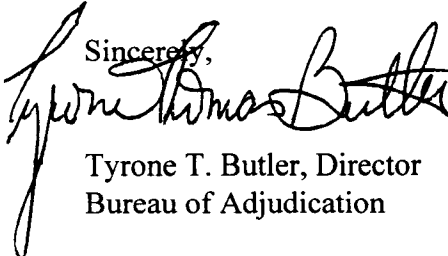
All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

**IN THE MATTER OF
OF
DAVID M. WURTZEL, M.D.**

**DETERMINATION
AND
ORDER**

ORDER # 99-124

A Notice of Referral Proceeding and Statement of Charges, both dated February 26, 1999, were served upon the Respondent, **DAVID M. WURTZEL, M.D.**, on March 4, 1999.

PATRICK F. CARONE, M.D., Chairperson, **DIANA E. GARNEAU, M.D.**, and **MARY PATRICIA MEAGHER**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10)(e) of the Public Health Law ["PHL"]. **DENNIS T. BERNSTEIN, ESQ.**, **ADMINISTRATIVE LAW JUDGE**, served as Administrative Officer for the Hearing Committee.

A hearing was held on May 4, 1999 at the Offices of the New York State Department of Health, 5 Penn Plaza, New York, New York. The Department of Health ["the Petitioner"] appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct. The Respondent appeared in person on his own behalf.

Evidence was received and a transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to PHL § 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of § 6530(9) of the Education Law [“Ed L”]. 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 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 Ed L §§ 6530(9)(b) and 6530(9)(d). The charges are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after review of the entire record in this matter. Numbers preceded by “Tr.” in parenthesis refer to hearing transcript page numbers. Numbers or letters preceded by “Ex.” in parenthesis refer to specific exhibits. These citations represent evidence that the Hearing Committee found persuasive 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 specified.

1. David M. Wurtzel, M.D. [“the Respondent”] was authorized to practice medicine in New York State on March 5, 1984, by the issuance of license number 157614 by the New York State Education Department (Ex. 3).
2. On or about August 17, 1998 the New Jersey State Board of Medical Examiners [“the NJ Board”] entered into a Consent Order with the Respondent [“the Consent Order”]. (Ex. 4).
3. The Consent Order suspended the Respondent's license to practice medicine for one year. However, the suspension was stayed and to be served as a period of probation. The Respondent was also required to pay a \$7,500 administrative penalty and to enroll in and successfully complete, at his own expense, a “PROBE” course in ethics. (Ex. 4, pp. 2-3).
4. In the Consent Order the NJ Board found and the Respondent conceded “that, when completing an application for hospital privileges at West Jersey Health Systems, respondent falsely stated that he had not been the subject of any professional liability suits (when in fact respondent had twice been sued), had never failed to pass a specialty board examination (when in fact respondent failed the Pediatrics Boards on five occasions before passing on a sixth attempt, and then failed a subspecialty examination for neonatology), and that he had never previously had medical staff appointments or clinical privileges terminated or not renewed (when in fact respondent had privileges terminated on several occasions because he failed to meet requirements that he pass Board examinations).” (Ex. 4, p.1).
5. The Consent Order also states that the Medical Practitioner Review Panel which investigated this matter “further found that respondent misrepresented information on the

West Jersey hospital application by failing to disclose that he had been affiliated with Cooper Hospital as an attending neonatologist from July 1991 through June 1992." (Ex. 4, p. 2).

6. Finally, the Consent Order states that the NJ Board "concludes that grounds for disciplinary action against respondent exist pursuant to N.J.S.A. 45:1-21(b), based upon findings that respondent knowingly engaged in fraud, deception and misrepresentation when completing his application for hospital privileges at West Jersey Health System **" and "it further appearing that respondent acknowledges the aforesaid misconduct **." (Ex. 4, p. 2).
7. The Respondent's conduct which resulted in the New Jersey Consent Order, would, if committed in New York State, constitute professional misconduct under the laws of New York State. More specifically, such conduct would constitute professional misconduct under Ed L § 6530(2) (practicing the profession fraudulently) and/or Ed L § 6530(21) (willfully making or filing a false report).

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 unless otherwise specified.

The Respondent did commit professional misconduct as defined by Ed L § 6530(9)(b). The Petitioner has proved by a preponderance of the evidence that the Respondent had 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.

The Respondent did commit professional misconduct as defined by Ed L § 6530(9)(d). The Petitioner has proved by a preponderance of the evidence that the Respondent had disciplinary action taken against him 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 OF THE HEARING COMMITTEE

(All votes were unanimous unless otherwise specified)

First Specification [Violation of Ed L § 6530(9)(b)]

Factual Allegations in support of the First Specification

- A Sustained
- B Sustained
- C Sustained

First Specification Sustained

Second Specification [Violation of Ed L § 6530(9)(d)]

Factual Allegations in support of the Second Specification

- A Sustained
- B Sustained
- C Sustained

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that the Respondent's license to practice medicine in the State of New York should be suspended for a period of one year, said suspension to be stayed, and that the Respondent be placed on probation during said one year period of suspension. However, the period of suspension and probation shall be tolled and the Respondent shall not be permitted to practice medicine in the State of New York until such time as the Respondent provides the Director of the Office of Professional Medical Conduct with a certified document issued by the NJ Board stating that the Respondent has complied with and successfully completed all the terms, conditions and/or requirements set forth in the New Jersey Consent Order and any extension or modification thereof and any other terms, conditions and/or requirements imposed by the NJ Board upon the Respondent. The complete terms of probation are attached to this Determination and Order as Appendix II.

This determination was reached after due and careful consideration of the full spectrum of penalties available pursuant to PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Hearing Committee's selection of a specific penalty was made after a thorough evaluation of the underlying acts of misconduct and whether the public is placed at risk by the Respondent.

The Hearing Committee also conducted a thorough evaluation of the Respondent's testimony and an extensive review of the documents admitted into evidence. The

Hearing Committee was not impressed with the Respondent's testimony. The Respondent attempted to minimize his conduct by claiming that he had no intent to mislead and that the misrepresentations were in error and unintentional (Tr. 14 and 21-22). However, this claim is incredulous since the underlying conduct does not consist of a single, isolated misrepresentation (Ex. 4, pp. 1-2). The Hearing Committee believes that the misrepresentations appearing in the Respondent's application for hospital privileges at West Jersey Health Systems were deliberate and intentional.

The Hearing Committee notes that the Petitioner has not sought the revocation of the Respondent's license to practice medicine. Given the nature of the underlying acts of misconduct and the penalty imposed by the NJ Board, the Hearing Committee believes that the Respondent does not represent a serious threat to the public. However, the Hearing Committee does not wish to be misunderstood as to in any way condoning the Respondent's conduct. The penalty imposed herein is designed to affirm the Hearing Committee's disapproval of the Respondent's conduct while imposing a fair punishment and offering sufficient protection to the public.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specifications of professional misconduct contained within the Statement of Charges (Ex. 1) are **SUSTAINED**; and

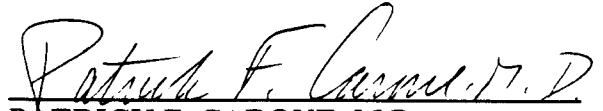
2. The Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED** for a period of one year, said suspension is hereby **STAYED**, and the Respondent is hereby placed on **PROBATION** during said one year period of suspension; and

3. The period of suspension and probation is hereby **TOLLED** and the Respondent is not permitted to practice medicine in the State of New York until such time as the Respondent provides the Director of the Office of Professional Medical Conduct with a certified document issued by the NJ Board stating that the Respondent has complied with and successfully completed all the terms, conditions and/or requirements set forth in the New Jersey Consent Order and any extension or modification thereof and any other terms, conditions and/or requirements imposed by the NJ Board upon the Respondent; and

4. The Respondent shall comply with all **TERMS OF PROBATION** as set forth in Appendix II, which is attached hereto and made a part of this Order; and

5. This **ORDER** shall be effective upon service on the Respondent which shall be either by certified mail at the Respondent's last known address (to be effective upon receipt or seven days after mailing, whichever is earlier) or by personal service (to be effective upon receipt).

**Dated: New York, New York
June , 1999**



**PATRICK F. CARONE, M.D.
Chairperson**

**DIANA E. GARNEAU, M.D.
MARY PATRICIA MEAGHER**

TO: ROBERT BOGAN, ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
Hedley Park Place
433 River Street, 4th Floor
Troy, N.Y. 12180-2299

DAVID M. WURTZEL, M.D.
219 Countryside Lane
Mount Laurel, N.J. 08054

Appendix 1

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

-----X

IN THE MATTER : STATEMENT
OF : OF
DAVID M. WURTZEL, M.D. : CHARGES

-----X

David M. Wurtzel, M.D., the Respondent, was authorized to practice medicine in New York State on March 5, 1984 by the issuance of license number 157614 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 17, 1995 the State of New Jersey, Department of Law & Public Safety Division of Consumer Affairs, State Board of Medical Examiners, (hereinafter "New Jersey Board") entered into a Consent Order with the Respondent. The Consent Order suspended the Respondent's license to practice medicine for one year. The suspension was stayed and to be served as a period of probation. It also imposed a fine of \$7,500 and required Respondent to complete a PROBE course in ethics at his own expense.

B. The New Jersey Board found, and the Respondent conceded in the Consent Order described in paragraph A, above "that when completing an application for hospital privileges at West Jersey

Health Systems, respondent falsely stated that he had not been the subject of any professional liability suits (when in fact respondent had twice been sued), had never failed to pass a specialty board examination (when in fact respondent failed the Pediatrics Boards on five occasions before passing on a sixth attempt, and then failed a subspecialty examination for neonatology), and that he had never previously had medical staff appointments or clinical privileges terminated or not renewed (when in fact respondent had privileges terminated on several occasions because he failed to meet requirements that he pass Board examinations). The Panel further found that respondent misrepresented information on the West Jersey hospital application by failing to disclose that he had been affiliated with Cooper Hospital as an attending neonatologist from July 1991 through June 1992." The New Jersey Board further found that "respondent knowingly engaged in fraud, deception and misrepresentation when completing his application for hospital privileges at West Jersey Health System;" and the Respondent "acknowledges the aforesaid misconduct."

C. The conduct resulting in the New Jersey Consent Order with the Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. N.Y. Education Law Section 6530(2) [practicing fraudulently]; and/or
2. N.Y. Education Law Section 6530(21) [willfully making or filing a false report].

SPECIFICATIONS

FIRST SPECIFICATION

Respondent is guilty of violating N.Y. Education Law § 6530(9)(b) by reason of 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 the Petitioner charges the following:


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

SECOND SPECIFICATION

Respondent is guilty of professional misconduct under N.Y. Education Law § 6530(9)(d) by reason of his having had disciplinary action taken against him 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 the Petitioner charges:

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

DATED: *February 26*, 1999
Albany, New York


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

APPENDIX II

TERMS OF PROBATION

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street, Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

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

5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.

7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall work only in a supervised setting, such as a facility licensed by New York State, where close practice oversight is available on a daily basis and where quality assurance and risk management protocols are in effect. Respondent shall not practice medicine until the supervised setting proposed by Respondent is approved, in writing, by the Director of OPMC.

- a. Respondent shall propose an appropriate supervisor or administrator in all practice settings, who shall be subject to the written approval of the Director of OPMC. Respondent shall cause the supervisor or administrator to submit reports, as requested (or quarterly), regarding Respondent's overall quality of medical practice.
- b. Respondent shall provide the supervisor/administrator in all settings with the Order and terms of probation and shall cause the supervisor/administrator, in writing, to comply with OPMC schedules and requests for information.
- c. Respondent shall submit semiannually a signed Compliance Declaration to the Director of OPMC which truthfully attests whether Respondent has been in compliance with the employment setting and required supervision.

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.