



# 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*

May 12, 1997

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

Samuel Yankasammy, M.D.  
14071 Flower Street Apt. #5  
Garden Grove, CA 92843

Marcia E. Kaplan, Esq.  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

**RE: In the Matter of Samuel Yankasammy, M.D.**

Dear Dr. Yankasammy and Ms. Kaplan:

Enclosed please find the Determination and Order (No. 97-106) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, stylized "T" and "B".

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  
SAMUEL YANKASAMMY, M.D.**

**DETERMINATION  
AND  
ORDER**

**BPMC - 97 - 106**

**CONRAD ROSENBERG, M.D., (Chair), JACK SCHNEE, M.D. and CAROL LYNN HARRISON, Ph.D.,** 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 **MARCIA E. KAPLAN, ESQ.,** Associate Counsel.

Respondent, **SAMUEL YANKASAMMY, M.D.,** did not appear personally and was not represented by counsel.

A Hearing was held on April 15, 1997. 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).

SAMUEL YANKASAMMY, M.D., ("**Respondent**") 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 [Second Specification] and § 6530[9][b] of the Education Law).

In order to find that Respondent committed § 6530(9)(b) misconduct, the Hearing Committee 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.

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<sup>1</sup> P.H.L. §230(10)(p), fifth sentence.

Respondent is also charged with professional misconduct within the meaning of § 6530(9)(d) of the Education Law, to wit: professional misconduct ... by reason of having disciplinary action taken or having voluntarily or otherwise surrendered his license after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, for conduct, which conduct, would, if committed in New York State constitute professional misconduct under the Laws of New York State (Petitioner's Exhibit # 1 [First Specification] and § 6530[9][d] of the Education Law).

In order to find that Respondent committed § 6530(9)(d) misconduct, the Hearing Committee must determine: (1) whether Respondent had some disciplinary action taken or instituted against him by a duly authorized professional disciplinary agency of another state; OR (2) whether Respondent surrendered his license after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state: AND (3) whether Respondent's conduct, on which the disciplinary action or surrender was taken 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.

### **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 September 10, 1973 by the issuance of license number 118058 by the New York State Education Department (Petitioner's Exhibits # 1 & # 3)<sup>2</sup>

2. Respondent is not currently registered (and has not been registered since 1979) with the New York State Education Department to practice medicine (Petitioner's Exhibit # 3); [T-5]<sup>3</sup>.

3. On March 15, 1997, Wendy Duffield personally served on Respondent a copy of a Notice of Referral Proceeding and a Statement of Charges (Petitioner's Exhibit # 2).

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

5. The Medical Board of California, Division of Medical Quality of the State of California ("**California Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of California (Petitioner's Exhibit # 4).

6. On July 14, 1986, the California Board charged (accusation # D--3523) Respondent with unprofessional conduct in the care and treatment of a patient. On April 2, 1987, a first supplemental accusation was issued and on June 29, 1987, a second supplemental accusation was issued (Petitioner's Exhibit # 4).

7. Respondent was charged in the accusations with unprofessional conduct in the care and treatment of eight patients during the period from November 1981 through October 1985 (Petitioner's Exhibit # 4).

8. Respondent was also charged with unprofessional conduct by acts of dishonesty in making, signing and filing false information in an application for reappointment to a hospital medical staff (Petitioner's Exhibit # 4).

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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). No exhibits were submitted by or on behalf of Dr. Yankasammy.

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

9. After 10 days of Hearings in California, Respondent was found to have committed unprofessional conduct in that he was grossly negligent in the care and treatment he provided to three patients and in providing false information in an application for reappointment (Petitioner's Exhibit # 4).

10. On September 29, 1988 (effective October 31, 1988), a final Order was issued ("**Order**") by the California Board which revoked Respondent's certificate to practice medicine in California. The revocation was stayed and the Respondent was placed on probation for seven (7) years with numerous specified terms and conditions (Petitioner's Exhibit # 4).

11. On October 27, 1995 the California Board filed a petition for revocation of probation, notifying Respondent that he failed to comply with certain terms of probation and that they were proposing to taking actions against his certificate to practice medicine in California (Petitioner's Exhibit # 4).

12. Respondent's conduct constituted violations of California Business and Professions Code [§ 2234(b)<sup>4</sup>; § 2234(e)<sup>5</sup>; and § 2261<sup>6</sup>]; (Petitioner's Exhibit # 4).

13. On August 22, 1996, Respondent voluntarily surrendered his certificate to practice medicine in California and agreed that he would not later reapply for a physicians' or D.E.A. certificate in California (Petitioner's Exhibit # 4).

14. The Hearing Committee accepts the 1988 Order of the California Board and adopts it, together with the 24 page Findings of Fact issued by the California Administrative Law Judge, as part of its own Findings of Fact (Petitioner's Exhibit # 4).

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<sup>4</sup> Gross Negligence.

<sup>5</sup> Act involving dishonesty which is substantially related to the qualifications, functions, or duties of a physician or surgeon.

<sup>6</sup> Knowingly making or signing any certificate or other document ... which falsely represents the existence or nonexistence of a state of facts.



15. Respondent has not filed a written answer to each (or any) of the charges and allegations contained in the Statement of Charges (Petitioner's Exhibit # 1); (P.H.L. § 230[10][p]).

16. Paragraph A and B of the Factual Allegations contained in the March 4, 1997 Statement of Charges are deemed admitted by the Hearing Committee by operation of Law (P.H.L. § 230[10][p]).

### **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 March 4, 1997 Statement of Charges, are SUSTAINED.

The Hearing Committee further concludes, based on the above Factual Conclusion, that the FIRST and SECOND SPECIFICATION OF CHARGES in the Statement of Charges are 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 California and his conduct in California would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

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

The California Board is a duly authorized professional disciplinary agency. In July 1986, April, 1987 and June 1987, the State of California, through the California Board instituted disciplinary action against Respondent.

The 1988 final Order of the California Board contains facts and conclusions which establish that Respondent's conduct constituted grounds for revocation of his California medical license. The final Order has findings, by the California Board, of guilt of violations of California Statutes. The California Board found by clear and convincing evidence to a reasonable certainty that Respondent committed unprofessional conduct in the practice of medicine by being grossly negligent on at least three separate occasions in the care and treatment he provided to 3 separate patients. In addition Respondent committed unprofessional conduct in the practice of medicine by making false representations, thereby committing a dishonest act, in an application for reappointment. Therefore, Respondent was found guilty of improper professional practice or professional misconduct by the California Board.

The record establishes that Respondent committed the New York equivalent of professional misconduct pursuant to at least § 6530(2)<sup>7</sup>; § 6530(3)<sup>8</sup>; and § 6530(4)<sup>9</sup> of the Education Law.

Respondent's acts constituted gross negligence in that he failed to surgically re-explore his patient and take corrective actions when he knew the probable source of the patient's abscess and peritonitis. Respondent's acts constituted gross negligence in that he reinfused autologous blood from a peritoneal tap into a patient, without first having blood cultures performed or otherwise precluding contamination. Respondent's acts constituted gross negligence in that he started gall stone surgery at a late hour without having a radiologist available and then prematurely terminated the procedure without appropriate resolution of the retained stones, thereby necessitating

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<sup>7</sup> Each of the following is professional misconduct... Practicing the profession fraudulently ...;

<sup>8</sup> Each of the following is professional misconduct... Practicing the profession with negligence on more than one occasion;

<sup>9</sup> Each of the following is professional misconduct... Practicing the profession with gross negligence on a particular occasion;

additional surgery for this patient. Respondent's acts constituted a dishonest act in that he submitted an application for reappointment to a Hospital and falsely represented that no prior corrective action had been taken against him by any medical staff.

Taking the findings of the California Board as true, the Hearing Committee finds that the record establishes that Respondent is guilty of (1) practicing the profession with gross negligence; (2) practicing the profession with negligence on more than one occasion<sup>10</sup>; and (3) practicing the profession fraudulently.

Since the Hearing Committee has determined that Respondent's conduct, if committed in New York State, would constitute professional misconduct under § 6530(2); § 6530(3); and § 6530(4) of the Education Law, Respondent has therefore committed professional misconduct pursuant to § 6530(9)(b) of the Education Law.

## **II. Professional Misconduct under §6530(9)(d) of the Education Law.**

In 1995 the California Board issued a petition for the revocation of Respondent's probation. As discussed above, Respondent had disciplinary action instituted against him by the California State Board. In 1988 the California Board had revoked Respondent's medical license in California. The revocation had been stayed and a seven (7) year probation had been imposed by California.

The California Board claimed that Respondent failed or refused to comply with the conditions of probation imposed by the California Board. Apparently in response to the California petition, Respondent submitted a letter in which he voluntarily surrendered his license to practice medicine in California.

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<sup>10</sup> Although California only found Respondent grossly negligent, the Hearing Committee determines that simple negligence has to be included before one can be found to be grossly negligent. Therefore, since Respondent was grossly negligent as to three separate patients, he must be negligent on more than one occasion, under New York law.

The Hearing Committee finds and determines that Respondent's conduct on which the disciplinary action was taken would, if committed in New York State, constitute professional misconduct under § 6530(29)<sup>11</sup> of the Education Law of New York State (See discussion under Part I above regarding Respondent's underlying acts).

Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(d) 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.

The record clearly establishes that Respondent committed significant misconduct in California. The fact that Respondent's license was revoked in California was significant to the Hearing Committee. The Hearing Committee also considered that Respondent was given another chance by California in their decision to stay the revocation and place Respondent on seven (7) years probation. It was obvious to the Hearing Committee that Respondent did not take advantage of California's leniency. This was shown by Respondent's surrender of his license after a petition for probation violations was instituted by California.

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<sup>11</sup> Each of the following is professional misconduct... Violating any term of probation or condition or limitation imposed on the licensee ... ;

In determining an appropriate measure of discipline to impose, the Hearing Committee is bound by the documentary evidence presented by Petitioner. Respondent failed to personally appear at the April 15, 1997 Hearing and provide any mitigation as to the sanctions to be imposed.

With regard to the issue of sanctions, the Hearing Committee recognizes that it is a generally accepted principal that the State where respondent lived and practiced medicine at the time of the offense has the greatest interest in the issue and the public policy considerations relevant to such disciplinary actions. The sanctions issued by the State of California and the license surrender by Respondent have been reviewed and carefully considered by the Hearing Committee. Based on all the evidence presented, the Hearing Committee determines that the same actions taken in the State of California are necessary in New York to adequately protect the people of the State of New York. Accordingly, Respondent's license to practice medicine in the State of New York should be revoked.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented relative to Respondent's acts of gross negligence, dishonesty and failures to comply with the California Board conditions, the Hearing Committee would have voted unanimous 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 totality of the circumstances presented.


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  
May 8, 1997

  
**CONRAD ROSENBERG, M.D.** (Chair),  
**JACK SCHNEE, M.D.**  
**CAROL LYNN HARRISON, Ph.D.**

Samuel Yankasammy, M.D.  
14071 Flower Street, Apt. # 5  
Garden Grove, CA 92843

Marcia E. Kaplan, Esq.  
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

1

IN THE MATTER  
OF  
SAMUEL YANKASAMMY, M.D.

STATEMENT  
OF  
CHARGES

SAMUEL YANKASAMMY, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 10, 1973, by the issuance of license number 118058 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about August 22, 1996, Respondent voluntarily surrendered his license to practice medicine after a disciplinary action was instituted by the Medical Board of California, where the conduct resulting in the surrender of his license would, if committed in New York state, constitute professional misconduct under N.Y. Educ. Law {namely N.Y. Educ. Law §6530(4) (practicing the profession with gross negligence on a particular occasion), §6530(3) (practicing with negligence on more than one occasion), §6530(2)(practicing the profession fraudulently), and/or §6530(29)(violating any term of probation or condition or limitation imposed on the licensee by the Board)}. On or about October 31, 1988, Respondent's California medical license had been revoked, the revocation was stayed, and Respondent was placed on seven years' probation on specified terms and conditions, as set forth in paragraph B below. In the Voluntary License Surrender, Respondent agreed that he did not want to follow through with his probation order and, in lieu of discipline, chose to voluntarily surrender his California license and his D.E.A. certificate in California.



B. On or about October 31, 1988, Respondent's California medical license was revoked, the revocation stayed, and Respondent was placed on seven years' probation on specified terms and conditions, including passing an oral clinical examination, attending continuing education courses, and submitting quarterly reports, as required. Respondent was found guilty of Gross Negligence, in violation of California Business and Professions Code section 2234(b), as follows: in failing to re-explore Patient S.E. and to take corrective actions when he knew the probable source of her abscess and peritonitis; in reinfusing autologous gross blood from a peritoneal tap into patient D.L.T. without first having blood cultures performed or otherwise precluding contamination; and by starting gall stone surgery on patient T. at a late hour, and then prematurely terminating the procedure, leaving retained stones for additional surgery at a later date. Respondent was found guilty of a Dishonest Act and False Representation in violation of California Business and Professions Code sections 2234(e) and 2261, respectively, as follows: by submitting an application for reappointment to associate status to the Martin Luther Hospital Medical Center in November 1985 wherein Respondent falsely represented that no prior corrective action had been taken against him by any medical staff. This conduct, if committed in New York state, would constitute professional misconduct under the laws of New York state {namely N.Y. Educ. Law §6530(4) (practicing the profession with gross negligence on a particular occasion), 6530(3) (practicing with negligence on more than one occasion), and 6530(2) (practicing the profession fraudulently)}.

## **SPECIFICATION OF CHARGES**

### **FIRST SPECIFICATION**

#### **HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1997) by having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, as alleged in the facts of the following:

1. Paragraphs A and B.

### **SECOND SPECIFICATION**

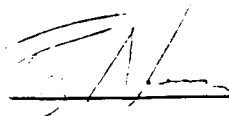
#### **HAVING BEEN FOUND GUILTY OF**

#### **PROFESSIONAL MISCONDUCT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1997) 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, as alleged in the facts of the following:

2. Paragraph B.

DATED: March 1997  
New York, New York



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct