



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

PUBLIC

Dennis P. Whalen
Executive Deputy Commissioner

September 30, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Oscar F. Jackson, M.D.
761 East Sunny Hill Road
Fullerton, California 92835

Oscar F. Jackson, M.D.
340 West Central Avenue, Ste 136
Brea, California 92831-3006

Robert Bogan, Esq.
Associate Counsel
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – 1st Floor Annex
Troy, New York 12180

RE: In the Matter of Oscar F. Jackson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.02-306) 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 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.

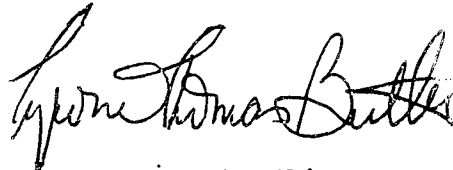
The notice of review served on the Administrative Review Board should be forwarded to:

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, appearing to read "Tyrone T. Butler". The signature is fluid and cursive, with the first name "Tyrone" being more prominent.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

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

COPY

IN THE MATTER
OF
OSCAR F. JACKSON, M.D.

DETERMINATION

AND

ORDER

#BPMC #02-306

A Notice of Referral Proceeding and Statement of Charges, both dated August 26, 2002, were served upon the Respondent, **OSCAR F. JACKSON, M.D.** **MICHAEL R. GOLDING, M.D.**, Chairperson, **JOHN B. WALDMAN, M.D.** and **MS. FRANCES TARLTON**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 19, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent failed to appear at the hearing in person or by an attorney.

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 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 Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (4) and (6). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to 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.

1. **OSCAR F. JACKSON, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 5, 1979, by the issuance of license number 140325 by the New York State Education Department (Ex. 4).
2. On February 14, 2002, the Medical Board of California ("the California Board") accepted a Stipulated Decision and Disciplinary Order between the Respondent and the Executive Director of the Board, wherein Respondent admitted certain specified factual findings and conclusions detailed in an Accusation filed against him by the Executive Director on January 28, 2000 (all in Ex. 5). The essence of the portions of the Accusation admitted by Respondent were that he committed acts of gross negligence and incompetence during and after a surgical procedure that resulted in a patient's death. Pursuant to the Stipulated Decision and Disciplinary Order, Respondent agreed to a stayed revocation of his Physician's and Surgeon's Certificate, an actual 90 day suspension and five year probation with conditions, including practice monitoring, the proctoring of 10 surgeries, the completion of medical ethics and record keeping courses, and the completion of a Physician Assessment and Clinical Education (PACE) program.
3. On August 27, 2002, copies of the Notice of Referral Proceeding, Statement of Charges, and a copy of the Department of Health Hearing Rules (Ex. 1) were mailed to Respondent by regular mail and by Certified Mail, Return Receipt Requested (Ex. 3), to his last known addresses, and the Department subsequently received back the return receipt signed by Respondent. In addition, on September 3, 2002, Respondent was personally served with the same documents (Ex. 2). The Notice of Referral Proceeding specified that Respondent was required to file a written answer to the Statement of Charges with the Bureau of Adjudication no later than ten days prior to the hearing, or

any allegations not so answered would be deemed admitted. Respondent was also advised in this notice that the proceedings would be held whether or not he appeared, that requests for adjournments must be made in writing to the Bureau of Adjudication at least five days before the scheduled hearing date and that adjournments are not routinely granted.

4. Mr. Bogan asserted at the hearing that he thereafter received a phone call from Respondent wherein Respondent indicated that would appear at the hearing. In addition, on the morning of the hearing, at approximately 11:30 A.M. Eastern Time (8:30 A.M. Pacific Time), Mr. Bogan called Respondent because he had not appeared for the hearing at the scheduled 10:00 start time, and reached his answering machine.
5. As of the time of the hearing, Respondent had not requested an adjournment of the hearing, nor had he filed an answer. Neither Respondent nor his attorney appeared for the hearing.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the California Board's disciplinary actions against Respondent constituted misconduct under New York Education Law §6530(b) and (d) because they would have constituted misconduct under the laws of New York State had they been committed here, pursuant to:

- New York Education Law §6530(4) (gross negligence);
- New York Education Law §6530(6) (gross incompetence);

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) 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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted 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 (3-0)

HEARING COMMITTEE DETERMINATION

It is noted at the outset that Respondent, although having received the Notice of Hearing and Statement of Charges, did not appear in person or by his attorney, nor did he request an adjournment or file an answer to the charges as required by law. The hearing proceeded in his absence.

The record in this case indicates that on February 14, 2002, California Board accepted a Stipulated Decision and Disciplinary Order between the Respondent and the

Executive Director of the Board, wherein Respondent admitted certain specified factual findings and conclusions detailed in an Accusation filed against him by the Executive Director. The essence of the portions of the Accusation admitted by Respondent were that he committed acts of gross negligence and incompetence during and after a surgical procedure that resulted in a patient's death. Pursuant to the Stipulated Decision and Disciplinary Order, Respondent agreed to a stayed revocation of his Physician's and Surgeon's Certificate, an actual 90 day suspension and five year probation with conditions, including practice monitoring, the proctoring of 10 surgeries, the completion of medical ethics and record keeping courses, and the completion of a Physician Assessment and Clinical Education (PACE) program.

The Hearing Committee determines that the issuance of the California the Stipulated Decision and Disciplinary Order forms the basis for findings of misconduct in New York pursuant to Education Law Sections 6530(9)(b) and (d), in that the underlying conduct would have constituted misconduct in New York, had it been committed here, pursuant to Education Law Sections 6530(4) and (6).

The only issue remaining to be decided in this decision is the appropriate penalty to be imposed in this state. In this regard, the Department argued that revocation of Respondent's license was the appropriate penalty, and Respondent presented no evidence that would mitigate against the imposition of that sanction, such as evidence of rehabilitation and remorse, or evidence suggesting a low probability of similar future conduct. The Hearing Committee feels, in addition, that absent any evidence as to Respondent's compliance with the terms of his California probation, including, especially, the assessment and retraining provisions, and absent any evidence as to the current state of Respondent's vision problems (as reported in the California Order), there is no

reasonable basis for concluding that it would be safe to permit Respondent to practice in New York State at this time. The only sanction that makes sense, in light of the foregoing, is revocation of Respondent's New York license. Although this sanction is somewhat more severe than that imposed by the State of California, that is because the California Board is in a position to continuously monitor Respondent's performance, pursuant to the probationary terms in the Order, whereas as long as Respondent resides outside of New York, that opportunity is not realistically available to the New York Board. However, it must also be noted that Respondent may apply for reinstatement of a New York license in three years, which should present him with an additional opportunity to present evidence of his ability to safely practice medicine.


ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **OSCAR F. JACKSON, M.D.** is hereby **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: New York, New York
27 Sept, 2002


MICHAEL R. GOLDING, M.D.
Chairperson

JOHN B. WALDMAN, M.D.
MS. FRANCES TARLTON

APPENDIX 1

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

EXHIBIT

DA EU 9/19/02

IN THE MATTER
OF
OSCAR F. JACKSON, M.D.
CO-02-05-2524-A

NOTICE OF
REFERRAL
PROCEEDING

TO: OSCAR F. JACKSON, M.D.
761 East Sunny Hill Road
Fullerton, CA 92835

OSCAR F. JACKSON, M.D.
340 West Central Avenue, Suite 136
Brea, CA 92821-3006

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 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 19th day of September 2002, 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 attached Statement of Charges. 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 that 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, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 9, 2002.

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 of 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 9, 2002, 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 26, 2002



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
OSCAR F. JACKSON, M.D.
CO-02-05-2524-A

STATEMENT
OF
CHARGES

OSCAR F. JACKSON, M.D., the Respondent, was authorized to practice medicine in New York state on October 5, 1979, by the issuance of license number 140325 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 14, 2002, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision and Order (hereinafter "California Order"), revoked Respondent's Physician and Surgeon's Certificate, stayed the revocation, placed Respondent on five (5) years probation, suspended him from the practice of medicine for the first ninety (90) days of his term of probation, required him to complete a medical ethics for physicians course, a PACE program, and a medical recordkeeping course, and to pay \$5,700.00 costs of investigation, based on gross negligence and incompetence.

B. The conduct resulting in the California Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(4) (gross negligence); and/or
2. New York Education Law §6530(6) (gross incompetence).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) 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 Petitioner charges:


1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *August 26*, 2002
Albany, New York


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