



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

January 8, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza Sixth Floor
New York, New York 10001

Julius Butler, Jr., M.D.
4539 Winding Hills Drive
Fair Oaks, California 95268

RE: In the Matter of Julius Butler, Jr., M.D.

Dear Mr. Smith and Dr. Butler:

Enclosed please find the Determination and Order (No. 97-19) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke at the end.

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-

JULIUS BUTLER, JR., M.D.

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE
BPMC ORDER
NO. 97-19

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated September 16, 1996 which were served upon **JULIUS BUTLER, JR., M.D.**, (hereinafter referred to as "Respondent"). **F. MICHAEL JACOBIUS, M.D.**, Chairperson, **ROBERT BRUCE BERGMANN, M.D.**, and **RANDOLPH MANNING**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on August 7, 1996 at Room 711, Legislative Office Building, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **DAVID W. SMITH, ESQ.**, Associate Counsel, Bureau of Professional Medical Conduct. Respondent did not appear in person but did submit a written statement, which was distributed to the Committee. Evidence was received. A transcript of these proceedings was made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530(9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530(9)(b) (having been found guilty of improper professional practice by a duly authorized professional disciplinary agency of another state) and pursuant to New York State Education Law, Section 6530(9)(d) (having had his license revoked by the duly authorized agency of another state). The charges in this proceeding arise from a Stipulation, Decision and Order issued by the Medical Board of California (hereinafter "the Order"). The Order revoked the California medical license of Respondent, stayed the said revocation and placed him on probation for five years. In addition, the Order required him to notify all hospitals where he had privileges, pass an oral clinical examination and submit an approved educational program consisting of not less than 40 hours per year for the first three years of his probation. The charges in California which led to the above sanctions included gross negligence, repeated negligence, and incompetence. The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

FINDINGS OF FACT

The Committee adopts the factual statements set forth on pages one through three of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS
WITH REGARD TO
FACTUAL ALLEGATIONS
AND
PENALTY

Petitioner herein has proven by a preponderance of the evidence that Respondent was found guilty of improper professional practice and was subjected to revocation (stayed) by the Division of Medical Quality, Medical Board of California. Furthermore, the conduct resulting in the discipline in California would constitute misconduct if committed in New York. Therefore, the Factual Allegations and Specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

The California authorities have imposed strict terms of probation upon Respondent. The acts alleged and established in California are serious and involve patient harm. Nevertheless, California, which is much more familiar with Respondent's practice, saw fit to stay a Revocation and allow Respondent to continue in practice. Reconciling the serious nature of the findings by the California authorities, combined with the faith in Respondent reflected by the ultimate decision of the authorities there, this Committee is inclined to follow their lead.

The Committee finds that Respondent's license to practice medicine should be Revoked. However, the said revocation should be stayed. Instead, the license of Respondent to practice medicine in New York State shall be suspended pending successful completion of his probation in California. If Respondent can prove to the California authorities that he is fit to practice, that would satisfy most of the concerns of this Committee. It is the intention of the Committee that Respondent's license in this state should be suspended until such time that he has fulfilled any existing terms of probation as well as any additional or amended terms which California should impose arising from the discipline in issue herein.

Furthermore, should Respondent choose to return to New York to practice, he shall be subject to five years probation upon terms set forth in the Order which follows.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the State of New York is hereby **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

4. The said revocation shall be **PERMANENTLY STAYED**;

Furthermore, it is hereby **ORDERED** that;

5. In lieu of the said revocation the license of Respondent to practice medicine in the State of New York shall be **SUSPENDED**

Furthermore, it is hereby **ORDERED** that;

6. The said suspension shall stay in full force and effect until such time as Respondent completes all existing terms of probation set forth in the California Order dated November 13, 1995 (a copy of which is attached hereto as Appendix Two) as well as any additional or amended terms imposed by the California authorities arising from the discipline referred to in Appendix One;

Furthermore, it is hereby **ORDERED** that;

7. Notwithstanding the successful completion of the terms imposed by the California authorities, should Respondent choose to practice medicine in New York State at any time in the future, he shall be subject to a term of probation of not less than five years, pursuant to the following terms:

- a. The Director of the Office of Professional Medical Conduct or his or her designee (hereinafter collectively referred to as "the Director") may, at his or her sole discretion, review the professional performance of Respondent by randomly selecting patient records, or hospital charts for patients who were cared for by Respondent.

- b. The Director may, at his or her sole discretion, require Respondent to obtain a practice monitor. The costs associated with the said monitor shall be at Respondent's expense.
- i. The said practice monitor shall be approved by the Director.
 - ii. The said practice monitor shall randomly select and review a sufficient number of patient files to ensure familiarity with the quality of Respondent's practice.
 - iii. The said practice monitor shall report to the Director at least quarterly with regard to the quality of Respondent's work.
 - iv. The said practice monitor shall immediately report to the Director any deviation from accepted standards of medical care.

Furthermore, it is hereby **ORDERED** that;

8. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated:
North Salem, New York

January 3 1997



F. MICHAEL JACOBIOUS, M.D., Chairperson
ROBERT BRUCE BERGMANN, M.D.
RANDOLPH MANNING

TO:

DAVID W. SMITH, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct
5 Penn Plaza, suite 601
New York, N.Y. 10001

JULIUS BUTLER JR. M.D.
4539 Winding Hills Dr.
Fair Oaks, Ca 95268

APPENDIX ONE

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

IN THE MATTER
OF
JULIUS BUTLER, JR., M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: JULIUS BUTLER, JR., M.D.
4359 Winding Hills Drive
Fair Oaks, California 95268

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on November 7, 1996, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would

not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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.

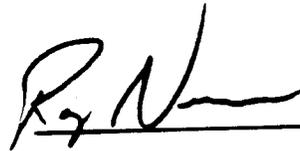
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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: New York, New York
Sept 16, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

DAVID W. SMITH
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2617

IN THE MATTER
OF
JULIUS BUTLER, JR., M.D.

STATEMENT
OF
CHARGES

JULIUS BUTLER, JR., M.D., the Respondent, was authorized to practice medicine in New York State on or about November 4, 1965, by the issuance of license number 093762 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 5, 1995, the Division of Medical Quality, Medical Board of California ("Board") issued a Stipulation, Decision and Order which revoked the California medical license of Respondent, stayed such revocation, placed him on five (5) years probation, required him to notify all hospitals where he had privileges, pass an oral clinical examination and submit an approved educational program for him to follow, of not less than 40 hours per year for the first three years of his probation.
1. The Board found him guilty of violating the California Medical Act, Sections 2234(b) (gross negligence), 2234(c) (repeated negligence), and 2234(d) (incompetence) in the care and treatment of breast cancer for Patient 1 and failure to timely deliver the baby of Patient 2 after clear sign of fetal distress.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

IMPROPER PROFESSIONAL PRACTICE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b) by having been found guilty of improper professional practice by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was made would, if committed in New York State, constitute professional misconduct under the laws of New York [namely N.Y. Educ. law §6530(4)(gross negligence on a particular occasion) (5) (incompetence on more than one occasion), and (3)(negligence on more than one occasion)], as alleged in the facts of the following:

1. Paragraphs A and A1.

SECOND SPECIFICATION

REVOCAION OF LICENSE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d) by having had his license revoked after a disciplinary action was instituted by a duly authorized disciplinary agency of another state where the conduct resulting in the revocation would, if committed in New York State, constitute professional misconduct under the laws of New York [namely N.Y. Educ.

law §6530(4)(gross negligence on a particular occasion) (5) (incompetence on more than one occasion), and (3)(negligence on more than one occasion)], as alleged in the facts of the following:

2. Paragraphs A and A1.

DATED: September 16, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct