



**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*

Dennis P. Whalen  
*Executive Deputy Commissioner*

**PUBLIC**

November 26, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert R. Treuherz, M.D.  
1402 NE 26<sup>TH</sup> Street  
Wilton Manors, Florida 33305-1322

Paul C. Buckley, Esq.  
George, Hartz, Lundeen, et al  
524 South Andrews Avenue  
Fort Lauderdale, Florida 33301

Robert Bogan, Esq.  
Associate Counsel  
NYS Department of Health  
Office of Professional  
Medical Conduct  
433 River Street, Suite 303  
Troy, New York 12180-2299

**RE: In the Matter of Robert R. Treuherz, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-325) 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.

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.

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,



Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:djh  
Enclosure

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

**COPY**

**IN THE MATTER**

**OF**

**ROBERT R. TREUHERZ, M.D.**

**DETERMINATION**

**AND**

**ORDER**

**BPMC NO. 03-0325**

A hearing was held on November 20, 2003, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated August 26, 2003, were served upon the Respondent, **Robert R. Treuherz, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Charles J. Vacanti, M.D.**, Chairperson, **Mohammad Ghazi-Moghadam, M.D.**, and **Ms. Virginia Marty**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear in person, but was represented by **Paul C. Buckley, Esq.**, George, Hartz, Lundeen, Fulmer, Johnstone, King & Stevens, Justice Building East, 524 South Andrews Avenue, Ft. Lauderdale, Florida 33301.

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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 Section 6530(9)(d). (The Respondent had also been charged in the First Specification of the Statement of Charges with a violation of Education Law Section 6530[9][b], but that Specification was withdrawn by the Petitioner during the hearing.) Copies of the Notice of Referral Proceeding and the Statement of Charges are 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. Robert R. Treuherz, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1987, by the issuance of license number 170505 by the New York State Education Department (Petitioner's Ex. 4).

2. On May 1, 2002, the Florida Board of Medicine ("Florida Board"), by a Final Order ("Florida Order"), issued the Respondent a letter of concern, required a risk manager to assess his current practice, required him to complete ten hours of continuing medical education in either diagnosing and treating gynecological conditions or risk management, and imposed \$2,149.25 costs and a \$5,000.00 fine, based on his having failed to practice medicine with the level of care, skill, and treatment that is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, and on his having failed to keep adequate records (Petitioner's Ex. 5).

3. On May 21, 2003, the Division of Medical Quality, Medical Board of California, California Department of Consumer Affairs, by a Decision, publicly reprimanded the Respondent and imposed \$300.00 costs of investigation, based on the Florida Order (Petitioner's Ex. 6).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(4) - "Practicing the profession with gross negligence on a particular occasion;"
- New York Education Law Section 6530(5) - "Practicing the profession with incompetence on more than one occasion;"

- New York Education Law Section 6530(6) - "Practicing the profession with gross incompetence;" and

- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of eighteen years; ..."

### **VOTE OF THE HEARING COMMITTEE**

#### **SECOND AND THIRD SPECIFICATIONS**

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken 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**

The Florida Board took disciplinary action against the Respondent because on two occasions his response to the results of a patient's Pap smear was medically inadequate. The Respondent has complied with all the conditions imposed by the Florida Order, regrets his mistakes and takes full responsibility for them. At the hearing, the Respondent recommended a penalty of censure and reprimand. The Petitioner joined in this recommendation. The Hearing Committee sees no reason to reject this joint recommendation.

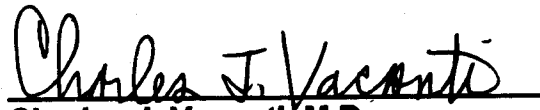
### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent is censured and reprimanded.

2. This Order shall be effective upon service in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Pittsford, New York  
24 November, 2003



**Charles J. Vacanti, M.D.**  
**Chairperson**

**Mohammad Ghazi-Moghadam, M.D.**  
**Virginia R. Marty**

# APPENDIX 1



**ORIGINAL**

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



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<b>IN THE MATTER</b>	<b>NOTICE OF</b>
<b>OF</b>	<b>REFERRAL</b>
<b>ROBERT R. TREUHERZ, M.D.</b>	<b>PROCEEDING</b>
<b>CO-03-07-3187-A</b>	

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**TO: ROBERT R. TREUHERZ, M.D.**  
1815 East Commercial Blvd.  
Suite 204  
Ft. Lauderdale, FL 33308

**ROBERT R. TREUHERZ, M.D.**  
1402 NE 26<sup>th</sup> Street  
Wilton Manors, FL 33305-1322

**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 25<sup>th</sup> day of September 2003, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> 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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON.

**JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 15, 2003.**

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 15, 2003, 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.

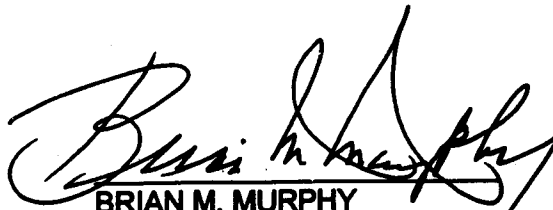
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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*, 2003



**BRIAN M. MURPHY**  
Chief 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

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IN THE MATTER  
OF  
ROBERT R. TREUHERZ, M.D.  
CO-03-07-3187-A

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STATEMENT  
OF  
CHARGES

ROBERT R. TREUHERZ, M.D., the Respondent, was authorized to practice medicine in New York state on July 1, 1987, by the issuance of license number 170505 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 1, 2002, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), issued Respondent a letter of concern, required a risk manager to assess his current practice, required him to complete ten (10) hours of CME in either diagnosing and treating gynecological conditions or risk management, and imposed \$2,149.25 costs of investigation and prosecution and a \$5,000.00 fine, based on failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, and by failing to keep adequate records.

B. On or about May 21, 2003, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California, (hereinafter "California Board"), by a Decision, (hereinafter "California Decision"), publicly reprimanded Respondent and imposed \$300.00 costs of investigation, based on the Florida Order set forth in Paragraph A above.

C. The conduct resulting in the Florida Board disciplinary action 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);
4. New York Education Law §6530(6) (gross incompetence); and/or
5. New York Education Law §6530 (32) (failure to maintain a record for each patient

which accurately reflects the evaluation and treatment of the patient);

D. The conduct resulting in the California Board disciplinary action would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State:

1. New York Education Law §6530(9)(d) (by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in this state constitute professional misconduct under the laws of this state).

#### **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, in that Petitioner charges:

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

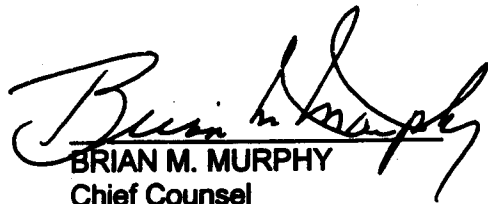
##### **SECOND AND THIRD SPECIFICATIONS**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken 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 Petitioner charges:

2. The facts in Paragraphs A and/or C;

3. The facts in Paragraphs A, B, C, and/or D.

DATE *August 26*, 2003  
Albany, New York

  
BRIAN M. MURPHY  
Chief Counsel  
Bureau of Professional Medical Conduct