



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

October 4, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Chester W. Zarnoch, Jr., M.D.
a/k/a Chester W. Zarnoch, M.D.
1008 Main Street
Hingham, Massachusetts 02043-3949

Robert Bogan, Esq.
Joel E. Abelove, Esq.
NYS Department of Health
Office of Professional Medical
Conduct

Chester W. Zarnoch, Jr., M.D.
a/k/a Chester W. Zarnoch, Jr., M.D.
175 Derby Street
Hingham, Massachusetts 02043

Hedley Building, Suite 303
433 River Street
Troy, New York 12180-2299

RE: In the Matter of Chester W. Zarnoch, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-215) 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.

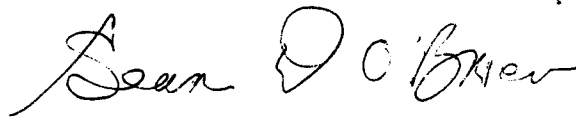
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

COPY

DETERMINATION

AND

ORDER

BPMC NO. 05-215

IN THE MATTER
OF
CHESTER W. ZARNOCH, JR., M.D.

A Notice of Referral Proceeding and Statement of Charges, both dated August 18, 2005, were served upon the Respondent, **CHESTER W. ZARNOCH, JR., M.D.** **MR. PETER S. KOENIG, SR.**, Chairperson, **ELEANOR KANE, M.D.** and **ALEXANDER M. YVARS, M.D., F.A.C.S.**, 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 22, 2005, 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.** and **JOEL E. ABELOVE, ESQ.**, of Counsel. The Respondent, although duly notified of the hearing, did not appear in person or by counsel.

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 (3), (4) and (32). 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. **CHESTER W. ZARNOCH, JR., M.D.**, the Respondent, was authorized to practice medicine in New York State on June 7, 1976, by the issuance of license number 127600 by the New York State Education Department. (Ex. 4)
2. On February 16, 2005, the Commonwealth of Massachusetts Board of Registration in Medicine ("the Massachusetts Board") issued a consent order, agreed to by Respondent on February 1, 2005, wherein it was concluded that Respondent had, in his encounters with one patient, "...engaged in conduct calling into question his competence to practice medicine, including gross negligence and negligence on repeated occasions..." and that he had failed to maintain a medical record for this patient that was adequate to enable him to provide proper diagnosis or treatment. As a sanction, the Massachusetts Board issued a reprimand and required Respondent to complete 20 hours of continuing medical education beyond that required for license renewal. (Ex. 5)

JURISDICTION

On August 22, 2005, Respondent was personally served with the Notice of Referral Proceeding, the Statement of Charges and a summary of the Health Department hearing rules. (Ex. 2). In addition, on August 18, 2005, Respondent was served with the same documents by Certified Mail, Return Receipt Requested and by First Class Mail, and he personally signed for the Certified Mail. The Administrative Law Judge ruled that the Department's service complied with Public Health Law §230(10)(d). Despite having been provided with actual notice of the hearing and the charges, and having been specifically advised in the notice that the hearing would take place whether or not he appeared, Respondent did not appear, nor did he request an adjournment of the proceedings. Furthermore, Respondent did not file an answer as required by Public Health Law

§230(10)(p), despite having been advised in the notice that his failure to do so would result in the charges being deemed to have been admitted by him.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Massachusetts Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(b) and (d), in that the conduct would have constituted misconduct in New York, had it been committed here, under:

- New York Education Law §6530(3) (practicing with negligence on more than one occasion);
- New York Education Law §6530(4) (practicing with gross negligence); and
- New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment).

The Hearing Committee concludes that the appropriate sanction to be applied under the circumstances is revocation of Respondent's New York license.

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

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had 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

HEARING COMMITTEE DETERMINATION

The record in this case establishes that, as indicated above, Respondent was sanctioned by the Massachusetts Board after he committed multiple acts of negligence and gross negligence with respect to his care of one patient, and kept inadequate records of that care. By providing care that generated these findings and causing discipline to be imposed against him by the Massachusetts Board, Respondent committed misconduct in New York under the statutory definitions cited above. Accordingly, pursuant to Public Health Law §230(10)(p), the only issue that can be addressed in this decision is the penalty to be imposed against Respondent by the New York State Board.

The possible sanctions are enumerated in P.H.L §230-a, and include:

- (1) Censure and reprimand;
- (2) Suspension of the license, wholly or partially;
- (3) Limitations of the license to a specified area or type of practice;
- (4) Revocation of the license;
- (5) Annulment of the license or registration;
- (6) Limitations on registration or the issuance of any further license;
- (7) The imposition of monetary penalties;
- (8) A course of education or training;
- (9) Performance of public service, and
- (10) Probation.

In this case, the Hearing Committee is unable to fashion a penalty that would both protect the residents of New York from future misconduct Respondent might commit if he moved here to practice, and would still provide an opportunity for him to practice, as a

result of his failure to answer the charges, to appear at the hearing, or to present any evidence. The Hearing Committee would like to have had available to it: evidence that Respondent understood the errors he had made and that he has taken steps to prevent recurrence of these errors; evidence regarding his compliance with the CME mandate in the Massachusetts Consent Order; evidence supporting the proposition that his handling of this case was aberrational and unlikely to be repeated; and any other evidence tending to support the proposition that he could practice safely in New York under specified conditions. The absence of such evidence weighs in favor of the sanction of license revocation.

In addition, Respondent's failure to file an answer as required by law, to respond in any other way to the charges or to appear at the hearing evince his disregard for the New York disciplinary process and manifests a lack of interest on his part in maintaining his New York license. Under these circumstances, the Hearing Committee concludes unanimously that it has no choice but to revoke Respondent's New York license.

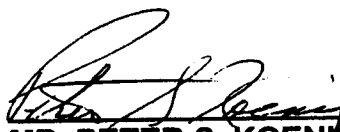
ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **CHESTER W. ZARNOCH, JR., M.D.** is hereby **REVOKED.**

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Dewitt, New York
Peter S. Koeng, 2005



MR. PETER S. KOENIG, SR.
Chairperson

ELEANOR KANE, M.D.
ALEXANDER M. YVARS, M.D., F.A.C.S.

APPENDIX 1

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

IN THE MATTER
OF

CHESTER W. ZARNOCH, JR., M.D.
aka CHESTER W. ZARNOCH, M.D.
CO-05-03-1456-A

NOTICE OF
REFERRAL
PROCEEDING

TO: CHESTER W. ZARNOCH, JR., M.D.,
aka CHESTER W. ZARNOCH, M.D.
1006 Main Street
Hingham, MA 02043-3949

CHESTER W. ZARNOCH, JR., M.D.,
aka CHESTER W. ZARNOCH, M.D.
175 Derby Street
Hingham, MA 02043

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure 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 22nd day of September 2005, 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. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 12, 2005.

Pursuant to the provisions of New York 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 12, 2005, 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 18, 2005



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
CHESTER W. ZARNOCH, JR., M.D.
aka CHESTER W. ZARNOCH, M.D.
CO-05-03-1456-A

STATEMENT
OF
CHARGES

CHESTER W. ZARNOCH, JR., M.D. aka CHESTER W. ZARNOCH, M.D., the Respondent, was authorized to practice medicine in New York state on July 1, 1976, by the issuance of license number 127600 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 16, 2005, the Commonwealth of Massachusetts, Board of Registration in Medicine (hereinafter "Massachusetts Board"), by a Consent Order (hereinafter "Massachusetts Order"), reprimanded Respondent and required him to complete twenty (20) CME credits beyond those required for license renewal, in the area of current trends and advances in ophthalmology and office management, based on gross negligence, negligence on repeated occasions, failure to meet the standard of care in treating a patient, and failure to maintain an adequate medical record for a patient.

B. The conduct resulting in the Massachusetts 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment).

SPECIFICATION

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 B.

SECOND SPECIFICATION

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:

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

DATED: *August 18*, 2005
Albany, New York


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