



New York State Board for Professional Medical Conduct

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Antonia C. Novello, M.D., M.P.H.
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NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

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Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

November 1, 1999

Mr. Robert Bentley, Director
Division of Professional Licensing Services
NYS Education Department
Cultural Education Center
Albany, New York 12230

RE: License No. 097500

Dear Mr. Bentley:

Please be advised the Appellate Division, Third Department has granted Moshe Hachamovitch, M.D. a stay of Determination and Order No. BPMC #99-261 effective October 26, 1999. A copy of the court's decision is attached.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Daniel Kelleher

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

X

In the Matter of
the Application
— of —

MOSHE HACHAMOVITCH, M.D.

Petitioner,

— against —

THE STATE BOARD FOR PROFESSIONAL MEDICAL
CONDUCT, a board under the auspices of the New York State
Department of Health,

Respondent.

for a judgment pursuant to CPLR Article 78.

ORDER TO
SHOW CAUSE

DOCKET #
85877

RECEIVED

OCT 28 1999

NYS DEPT. OF HEALTH
X DIVISION OF LEGAL AFFAIRS

Upon the annexed petition of MOSHE HACHAMOVITCH, M.D., verified on the 25th day of October, 1999, the annexed affirmation of ANTHONY Z. SCHER, ESQ., affirmed on the 25th day of October, 1999, Decision and Order No. BPMC 99-261 dated October 14, 1999, and upon all of the papers and proceedings previously had herein,

Let Respondent or its attorneys show cause before the Supreme Court, Appellate Division, Third Department, Justice Building, Albany, New York, on the 15TH day of *November*, 1999 at 10:00 A.M. why a Judgment and Order should not be entered pursuant to Article 78 of the CPLR and section 230-c(5) of the Public Health Law;

(a) staying the Determination and Order of the Hearing Committee of respondent, The State Board for Professional Medical Conduct, No. BPMC 99-261 pending the hearing and

resolution of this Article 78 proceeding;

(b) staying respondent and its officers, agents, employees and representatives from enforcing or disclosing Determination and Order No. BPMC 99-261 and the report upon which said order is based pending the hearing and determination of this proceeding;

(c) vacating and annulling Determination and Order No. BPMC 99-261 issued by respondent, The State Board for Professional Medical Conduct, on the ground that said order is violative of petitioner's right to due process, arbitrary and capricious, erroneous as a matter of law, and unsupported by substantial evidence and imposes a penalty that is shocking to the conscience when the severity of the penalty is compared to the gravity of the alleged misconduct;

(d) granting such other and further relief which the Court deems just and proper, together with the costs and disbursements of this proceeding;

and it is further,

ORDERED, that the Determination and Order of the hearing committee of respondent, The State Board for Professional Medical Conduct, No. BPMC 99-261 is hereby stayed *only to the extent that the suspension is stayed, subject to** pending the determination of the within motion brought on by this Order to Show Cause; and it is further

ORDERED, that the motion brought on by this Order to Show Cause shall not be orally argued unless counsel are notified to the contrary by the Clerk of the Court.

Sufficient cause appearing therefore, service by personal service or by overnight mail upon the respondent by serving the Division of Legal Affairs, Department of Health, Corning Tower, Albany, and upon Eliot Spitzer, Attorney General of the State of New York, 120 Broadway, New York, NY of this Order and the papers annexed hereto on or before

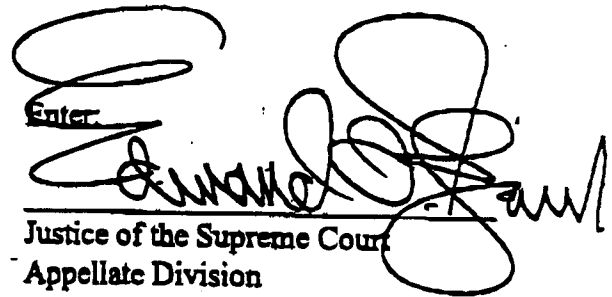
* THE CONDITIONS THAT PETITIONER SHALL AT ALL TIMES HEREAFTER MUST HAVE IN THE PERFORMANCE OF ALL PROCEDURES USING GENERAL ANESTHESIA HAVE A BOARD CERTIFIED ANESTHESIOLOGIST ON SITE AND IN ATTENDANCE OF SAID PATIENTS AND PETITIONER MUST HAVE PRESENT AT ALL TIMES IN HIS RECOVERY ROOM AN ENRICHED A STAFF MEMBER WHO IS CERTIFIED IN ACLS

EOS

EOS

1999 shall be deemed sufficient.

Dated: October ²⁶~~28~~, 1999

Enter 

Justice of the Supreme Court
Appellate Division
Third Department