



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

December 24, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Harvey Walter Brookman, M.D.
12 Moon Circle
Yardley, PA 19067

Joseph Rosenberg, Esq.
40 Paterson Street
New Brunswick, NJ 08903

Claudia Morales Bloch, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Harvey Walter Brookman, M.D.

Dear Dr. Brookman, Mr. Rosenberg and Ms. Bloch:

Enclosed please find the Determination and Order (No. BPMC-96-301) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

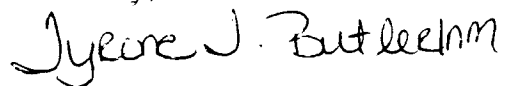
The notice of review served on the Administrative Review Board should be forwarded to:

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 distinct 'M' at the end.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc

Enclosure

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

IN THE MATTER

OF

HARVEY WALTER BROOKMAN, M.D.

COPY

DETERMINATION

AND

ORDER

PMC - 96 - 301

ROGER M. OSKVIG, M.D., (Chair), **ADRIAN EDWARDS, M.D.** and **ANN SHAMBERGER** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **CLAUDIA MORALES BLOCH, ESQ.**, Associate Counsel.

Respondent, **HARVEY WALTER BROOKMAN, M.D.**, appeared personally and was represented by counsel **JOSEPH ROSENBERG, ESQ.**, of counsel.

A Hearing was held on October 22, 1996. Evidence was received and examined, including witnesses who were sworn or affirmed. A Transcript of the proceeding was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§ 230 et seq. of the Public Health Law of the State of New York [hereinafter "**P.H.L.**"]).

This case, brought pursuant to P.H.L. § 230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

Respondent, HARVEY WALTER BROOKMAN, M.D., is charged with professional misconduct within the meaning of § 6530(9)(b) of the Education Law of the State of New York ("**Education Law**"), to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and § 6530[9][b] of the Education Law).

In order to find that Respondent committed § 6530(9)(b) professional misconduct, the Hearing Committee must determine: (1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the findings were based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as

¹ P.H.L. §230(10)(p); fifth sentence.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on November 6, 1981 by the issuance of license number 148639 by the New York State Education Department (Petitioner's Exhibits # 1, # 2 & # 7)².

2. Respondent is currently registered with the New York State Education Department to practice medicine (Petitioner's Exhibit # 2).

3. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (Respondent was personally served and had no objection to the personal service effected on him); (P.H.L. § 230[10][d]); (Petitioner's Exhibit # 1); [T-6-7]³.

4. The State Board of Medical Examiners of the State of New Jersey ("**New Jersey Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of New Jersey (Petitioner's Exhibits # 3, # 4 & # 5).

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit). No exhibits were submitted by Dr. Brookman.

³ Numbers in brackets refer to transcript page numbers [T-].

5. The Board of Medicine of the Commonwealth of Pennsylvania ("**Pennsylvania Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the Commonwealth of Pennsylvania (Petitioner's Exhibit # 6).

6. On December 14, 1994, the New Jersey Board issued an Order of temporary suspension of Respondent license to practice medicine in New Jersey (Petitioner's Exhibit # 4).

7. On February 13, 1996 a final Order of Administrative Action, Stipulation of Settlement ("**Stipulation**"), was issued by the New Jersey Board. Said stipulation, approved and signed by Respondent, imposed the following conditions on Respondent's ability to practice medicine in the State of New Jersey:

(a) Respondent voluntarily surrendered his New Jersey license to practice medicine and surgery with prejudice to his right to apply for reinstatement;

(b) Respondent admitted to factual allegations (in the New Jersey Complaint) arising from his treatment of three patients at Helene Fuld Medical Center in 1987-1988, in violation of New Jersey laws dealing with (1) gross negligence⁴; (2) repeated acts of negligence⁵; and (3) gross neglect in the practice of medicine which has endangered the health or life of persons⁶;

(c) Respondent admitted to failure to maintain adequate patient records⁷;

(d) Respondent admitted to altering certain medical records⁸;

(e) Respondent denied the remainder of the charges;

(Petitioner's Exhibits # 3, # 4 & # 5).

⁴New Jersey Statutes Annotated ("N.J.S.A.") § 45:1-21(c).

⁵ N.J.S.A. § 45:1-21(d).

⁶ N.J.S.A. § 45:9-16(h).

⁷ N.J.S.A. § 13:35-6.5 and N.J.S.A. § 45:1-21(h).

⁸ N.J.S.A. § 45:1-21(b) and N.J.S.A. § 45:1-21(e).

8. The crux of Respondent's conduct, in New Jersey, involved the routine performance of hysteroscopic examinations of pregnant patients. Such examinations are contraindicated during pregnancy and are without medical justification. Respondent also routinely performed hysteroscopic and ultrasound examinations of patients presenting in his office for semi-annual gynecological examinations. These procedures, done where there were medical indications that the procedures presented a risk of harm to the patients, were contraindicated. Respondent routinely charged \$600.00 for a hysteroscopic examinations and \$300.00 for a sonogram. In addition, Respondent altered the records of his patients (Petitioner's Exhibits # 3, # 4 & # 5).

9. As a result of the Stipulation, the New Jersey Board imposed the following penalties on Respondent:

(a) Respondent's license to practice medicine in the State of New Jersey was suspended, for eight months, retroactive to November 28, 1994 (until July 31, 1995);

(b) assessment of a civil penalty of \$7,500.00

(c) costs of the New Jersey investigation;

(d) 100 hours of continuing medical examination in the Obstetrics/Gynecology ("C.M.E. in OB/GYN") field, during each of the following three years;

(e) forever refrain from performing hysteroscopies in his medical practice in any jurisdiction;

(Petitioner's Exhibits # 3, # 4 & # 5).

10. The Hearing Committee accepts the Stipulation of Settlement between the New Jersey Board and Respondent and adopts same as part of its own Findings of Fact (Petitioner's Exhibit # 3 is annexed as Appendix II).

11. On February 22, 1996, the Pennsylvania Board suspended Respondent's license to practice medicine in the Commonwealth of Pennsylvania. This suspension was based on the aforementioned New Jersey State Board's action and Stipulation of February 13, 1996. The Pennsylvania Board found that Respondent's conduct in New Jersey or his discipline by the New Jersey Board was a violation of Pennsylvania Statutes ("P.S.") § 422.41(4) (Petitioner's Exhibit # 6).

12. Respondent's Pennsylvania license was placed on active suspension until he provided satisfactory proof of completion of 100 hours in C.M.E. in OB/GYN courses taken after January 23, 1996. After submission of satisfactory proof, Respondent's license would be placed on stayed suspension and a term of probation for two years with a number of conditions to follow. In addition, Respondent was assessed a civil penalty of \$1,000.00 and prohibited from performing hysteroscopies or aiding or assisting in the performance of hysteroscopies in his medical practice in any state or jurisdiction in the United States (Petitioner's Exhibit # 6).

13. On May 13, 1996, the Pennsylvania Board issued a new Order, acknowledging receipt of satisfactory proof that Respondent had completed the required 100 hours of C.M.E. in OB/GYN courses. This May 13, 1996 Order lifted the actual suspension of Respondent's medical license and set forth the stayed suspension period as well as the terms and conditions of probation (Petitioner's Exhibit # 6).

14. On January 14, 1993, in New York State, Respondent applied for a consent Order, admitting to one specification of professional misconduct. Respondent was Censured and Reprimanded and fined \$2,500.00. Respondent had been charged with being subject to disciplinary action by another state (New Jersey). These Charges (New Jersey and New York) are unrelated to the present factual circumstances (Petitioner's Exhibit # 7).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual Allegations, from the September 19, 1996 Statement of Charges, are **SUSTAINED**. The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found to have committed, at least, fraud, gross negligence, negligence on more than one occasion, and failure to maintain proper records.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct in the State of New Jersey would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof as to the Specification of Charges.

The record establishes that Respondent's conduct in New Jersey constitutes professional misconduct pursuant to, New York laws, in violation of at least, §§ 6530(2)⁹, 6530(3)¹⁰, 6530(4)¹¹, and 6530(32)¹² of the Education Law.

The Hearing Committee concludes and determines, based on all of the evidence presented, that the **SPECIFICATION OF CHARGES** is **SUSTAINED**. The Hearing Committee's further rationale is set forth in the remainder of this Determination and Order.

⁹ Each of the following is professional misconduct... Practicing the profession fraudulently ... ;

¹⁰ Each of the following is professional misconduct... Practicing the profession with negligence on more than one occasion;

¹¹ Each of the following is professional misconduct... Practicing the profession with gross negligence on a particular occasion.

¹² Failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.;

DISCUSSION

Professional Misconduct under § 6530(9)(b) of the Education Law.

The New Jersey Board and the Pennsylvania Board are duly authorized professional disciplinary agencies. In 1994, the State of New Jersey, through the New Jersey Board instituted disciplinary action against Respondent and issued an immediate Order of Temporary suspension. This Order was based on a finding by the New Jersey Board that Respondent's continued practice posed a clear and imminent danger to the public health, safety, and welfare.

The New Jersey Board found, and Respondent stipulated, that Respondent was grossly negligent, had committed repeated acts of negligence; and was grossly neglect in his practice of medicine which had endangered the health or life of his patients, on at least three occasions.

Respondent's failures dealt with his routine performance of hysteroscopic examinations and ultrasound examinations of patients where there were medical indications that the procedures presented a risk of harm to his patients. These procedures were contraindicated and not medically justified.

Respondent also failed to maintain proper patient records and altered a number of his patients' records solely for his own benefit.

In 1996, the Pennsylvania Board sanctioned Respondent for his professional misconduct in New Jersey.

The record establishes that Respondent's conduct in New Jersey constitutes professional misconduct pursuant to, New York laws, in violation of at least, §§ 6530(2), 6530(3), 6530(4) and 6530(32) of the Education Law.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. § 230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The Hearing Committee finds and determines that Respondent has not shown that he has the appropriate capabilities or moral characteristics to practice medicine in the State of New York.

Respondent's lack of integrity, character and moral fitness is evident in his course of conduct in New Jersey and his testimony before the Hearing Committee. Respondent did not provide the Hearing Committee with any reason to issue any penalty other than revocation. Respondent's acts were deliberate, not accidental, not unconscious and not technical.

Respondent had been censured and reprimanded by New York State in 1993 for some of the same conduct of altering Patient records. Respondent claims that the fraud involved here is not a financial or garden variety health care fraud. The Hearing Committee disagrees. The fraud involved shows a basic flaw in Respondent's character. In addition, Respondent charged for each procedure which he knew was contraindicated. Respondent's alteration of the medical records is proof of his attempt to hide the unnecessary charges (and procedures) from review by the State of New Jersey.

The Hearing Committee determines that Respondent's fraud was for his own reward. The Hearing Committee believes that Respondent presented a number of excuses for his actions without awareness or responsibility. It was clear from Respondent's testimony that he did not accept what occurred in New Jersey very seriously. For example Respondent, in discussing the patient records, indicated "technically ... I changed something that shouldn't have been changed". When Respondent was questioned about the status of his New Jersey license, Respondent replied "It's technically in suspension, I believe". Respondent was less than clear on what all of New Jersey's other sanctions and conditions were. The Hearing Committee perceived a very cavalier attitude from Respondent.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented about the fraud, repeated acts of negligence and gross negligence, it would have resulted in a unanimous vote for revocation of Respondent's license.

In determining an appropriate measure of discipline to impose, the Hearing Committee has considered the mitigating factors offered by Respondent including the testimony presented by his former office manager, his former patient and her husband and by Respondent himself.

With regard to the issue of sanctions, it is a generally accepted principal that the State where respondent lived and practiced medicine at the time of the offense has the greatest interest in the issue and the public policy considerations relevant to such disciplinary actions. The sanctions issued by the State of New Jersey and by the Commonwealth of Pennsylvania have been reviewed and carefully considered by the Hearing Committee. Based on all the evidence presented, the Hearing Committee does not believe that those sanctions provide adequate safeguards for the people of the State of New York.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the safety and the finances of the people of New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

All other issues raised have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.


ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and

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

DATED: New York, New York
December 19, 1996



ROGER M. OSKVIC, M.D., (Chair),

ADRIAN EDWARDS, M.D.
ANN SHAMBERGER

Harvey Walter Brookman, M.D.
12 Moon Circle
Yardley, PA 19067

Joseph Rosenberg, Esq.
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Claudia Morales Bloch, Esq.
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001



APPENDIX I

IN THE MATTER
OF
HARVEY WALTER BROOKMAN, M.D.

STATEMENT
OF
CHARGES

HARVEY WALTER BROOKMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 6, 1981, by the issuance of license number 148639 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about February 13, 1996, the New Jersey State Board of Medical Examiners issued an Order approving a Stipulation of Settlement with the Respondent wherein Respondent admitted to having committed various acts of professional misconduct. This Stipulation of Settlement followed a December 14, 1992 Order of the New Jersey State Board which suspended Respondent's license to practice medicine in the State of New Jersey pending a full hearing. In said Ordered Stipulation of Settlement, Respondent admitted guilt to the following:
1. His acts of gross negligence and repeated negligence regarding his care and treatment of three patients in or about 1987-1988, in violation of N.J.S.A. 45:1-21(c) and (d) and 45:-16(h);
 2. His failure to maintain certain adequate patient records, in violation of N.J.S.A. 13:35-6.5 and 45:1-21(h);

3. His having altered certain medical records, in violation of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:1-21(e).
- B. On or about February 22, 1996, an Order was issued by the Commonwealth of Pennsylvania Department of State Board of Medicine against Respondent based upon the New Jersey State Board's disciplinary action set forth in paragraph A, and A(1) through A(3), supra, and finding that Respondent had violated 63 P.S. Sec. 422.41(4) in that Respondent was disciplined by the State of New Jersey.
- C. The conduct committed by Respondent resulting in the disciplinary actions in the State of New Jersey and the State of Pennsylvania would, if committed in New York state, constitute professional misconduct under the laws of New York state, to wit: N.Y. Educ. Law Sec. 6530(2), 6530(3), 6530(4), and 6530(9)(b) [McKinney Supp. 1996].

SPECIFICATION OF CHARGES

**HAVING BEEN FOUND GUILTY OF
PROFESSIONAL MISCONDUCT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1996) 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 as alleged in the facts of the following:

1. The facts in paragraphs A, A(1), A(2), A(3), B, and C.

DATED: September 17, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

PETITIONER'S
EXHIBIT
7-2V
10/22/96/16

IN THE MATTER OF THE SUSPENSION : STATE OF NEW JERSEY
OR REVOCATION OF THE LICENSE OF : DEPARTMENT OF LAW AND PUBLIC
: SAFETY
: OFFICE OF ADMINISTRATIVE LAW
HARVEY W. BROOKMAN, M.D. :
: OAL DOCKET #BDSME-00181-95S
TO PRACTICE MEDICINE AND SURGERY: ADMINISTRATIVE ACTION
IN THE STATE OF NEW JERSEY : STIPULATION OF SETTLEMENT

This Stipulation is entered between Harvey W. Brookman, M.D. (Respondent) and the New Jersey State Board of Medical Examiners (Board) and is based upon the following facts:

A. Respondent has been the holder of a plenary license to practice medicine and surgery in the State of New Jersey since 1981 and has maintained an obstetrical/gynecological practice at an office located at 2067 Klockner Road, Hamilton Square, New Jersey 08690; and

B. Respondent has been a holder of a license to practice medicine without restriction in the Commonwealth of Pennsylvania since 1982 and has maintained an obstetrical/gynecological practice at an office located at 301 Oxford Valley Road, Suite 104A, Yardley, Pennsylvania 19067; and

C. The Board filed an Order to Show Cause and Administrative Complaint on November 2, 1994, seeking the emergent temporary suspension of Respondent's license to practice medicine in the State of New Jersey pending a plenary hearing before the Office of Administrative Law on the charges embodied in the Administrative Complaint; and

CELESTINE

D. A hearing on the petition for emergent temporary suspension was held on November 28, 1994 before a committee of the Board which resulted in the issuance of an Order temporarily suspending Respondent's license pending a hearing before the entire Board; and

E. On December 14, 1994, the full Board ratified the Order of emergent temporary suspension issued by the committee; and

F. This matter has been transferred to the Office of Administrative Law for a plenary hearing regarding the allegations set forth in the Administrative Complaint; and

G. The Administrative Complaint alleges in part that Respondent engaged in gross and repeated acts of negligence and malpractice in violation of N.J.S.A 45:1-21(c) and (d) by routinely performing hysteroscopic examinations of female patients in the presence of medical factors that presented a risk of harm to his patients; and

H. The Respondent denies that he has ever performed hysteroscopic examinations where not medically indicated and further denies that his use of hysteroscopic examinations has resulted in any risk of harm or actual harm to his patients; and

I. The Respondent has voluntarily refrained from the use of hysteroscopic examinations in his New Jersey and Pennsylvania medical practices since November 1994 pending a plenary hearing before the Office of Administrative Law and a decision; and

J. There has been no evidence of any actual harm to any patient or child as a result of the treatment of any patient since the use of the procedure by Dr. Brookman during the past eight

years but the Board considers hysteroscopic procedures performed by Respondent to have created a risk of harm; and

K. The Administrative Complaint also alleges that Respondent failed to maintain certain adequate patient records in accordance with N.J.A.C. 13:35-6.5 and N.J.S.A. 45:1-21(h); and

L. The Administrative Complaint also alleges that Respondent materially altered the records of ten of his patients identified in the Administrative Complaint in violation of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:1-21(e); and

M. The remainder of the Administrative Complaint alleges acts of medical negligence in violation of N.J.S.A. 45:1-21(c) and (d), including patients treated by Respondent at Helene Fuld Medical Center in or about 1988; and

N. The Respondent denies that he has engaged in any acts of gross negligence, negligence or malpractice with regard to the treatment of his patients except as hereafter provided; and

O. The parties desire to resolve this matter without further formal proceedings and the Respondent additionally desires to resolve this matter for personal and family reasons; and

P. The Board has agreed that the within disposition adequately protects the public's health, safety and welfare;

IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES AND ORDERED BY THE COURT AS OF THIS 6th DAY OF February 1996:

1. The Respondent agrees to voluntarily surrender his New Jersey license to practice medicine and surgery with prejudice to his right to apply for reinstatement. The Board acknowledges that the voluntary surrender of Respondent's license is not a penalty

for any violation alleged in the Administrative Complaint or for any admissions by Respondent in this Stipulation.

2. Respondent hereby admits the factual allegations arising from his treatment of three patients at Helene Fuld Medical Center in 1987-1988 as alleged in Count IV of the Administrative Complaint, in violation of N.J.S.A. 45:1-21(c)(d) and N.J.S.A. 45:9-16(h).

3. Respondent hereby admits that he failed to maintain certain adequate patient records in violation of N.J.A.C. 13:35-6.5 and N.J.S.A. 45:1-21(h) as alleged in Count VIII of the Administrative Complaint.

4. Respondent hereby admits alterations of certain medical records in violations of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:1-21(e) as alleged in Count IX of the Administrative Complaint.

5. Respondent denies the charges as alleged in Counts I, II, III, V, VI and VII of the Administrative Complaint.

6. In consideration of the preliminary findings of the Board with regard to the allegations set forth in the Administrative Complaint as well as the admissions by Respondent set forth in this Stipulation, the Board imposes and Respondent consents to the following as the sole penalties for the violations alleged in the Administrative Complaint:

(a) Respondent's license to practice medicine and surgery in the State of New Jersey shall be suspended for a period of eight months, which period of suspension shall be retroactive to November 28, 1994 and shall expire at twelve midnight on July 31, 1995.

(b) Respondent shall pay a civil penalty in the amount of \$ 7,500.00 upon execution of this Stipulation by the parties.

(c) Respondent shall pay the costs (not including attorneys' fees) arising from the investigation of this matter in an amount to be determined based upon certifications, including expert fees and transcript costs, and decided upon by Judge Masin. The Attorney General shall have 30 days from the date of this Stipulation to make such application for these costs to Judge Masin, upon notice to the Respondent, who shall then have the opportunity to file any opposing certifications or briefs. Judge Masin shall decide the amount to be paid by the Respondent and the time for payment.

(d) Respondent shall undertake and successfully complete 100 hours of continuing medical education in the OB\GYN field during each of the three years next following the entry of this Stipulation and shall indicate by letter each year to the Pennsylvania State Board of Medicine his compliance with this provision.

(e) Respondent agrees that he will refrain forever from performing hysteroscopies in his medical practice in any jurisdiction.

(f) With regard to the obligations set forth in subparagraph (d) and (e) of this Stipulation, Respondent agrees to allow the Pennsylvania State Board of Medicine to review his patient records every six months for the next three years following the entry of this Stipulation to review his practice and his compliance with the terms and conditions of this Stipulation.

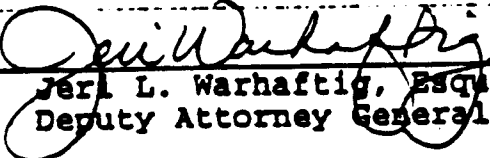
(g) The Pennsylvania State Board of Medicine shall by letter each year to the Board confirm that the Respondent has complied with the terms and conditions of this Stipulation.

7. Respondent offers the admissions in this Stipulation solely to resolve this administrative proceeding and not for use in any other civil or administrative or other type of proceeding which may occur.

APPROVED AS TO FORM AND ENTRY:


DEBORAH PORITZ
ATTORNEY GENERAL OF NEW JERSEY

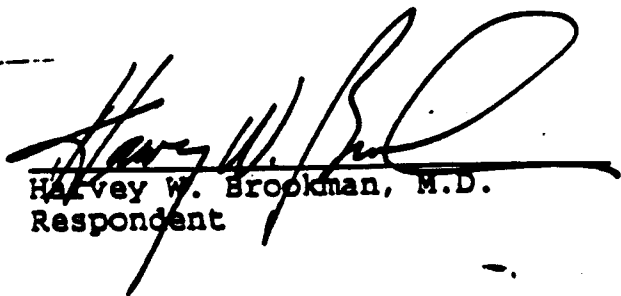
PELLETTIERI, RABSTEIN AND ALTMAN
ATTORNEYS FOR RESPONDENT

BY: 
Jeri L. Warhaftig, Esquire
Deputy Attorney General

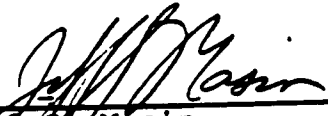
BY: 
Mel Naro, Esquire

NEW JERSEY STATE BOARD OF MEDICAL
EXAMINERS

BY: 
Robert L. Johnson, M.D., F.A.A.P.
Board President


Harvey W. Brookman, M.D.
Respondent

AND IT IS SO ORDERED ON THIS 13 DAY OF February, 1996.


Jeff A. Masin
Administrative Law Judge
of the State of New Jersey
Office of Administrative Law