



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

September 13, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Hauben, M.D.
351 Meeting House Lane
Suite G
Southampton, New York 11968

Courtney Berry, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

Anthony Z. Scher, Esq.
Wood & Scher
14 Harwood Court
Scarsdale, New York 10583

RE: In the Matter of Robert Hauben, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-203) 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.

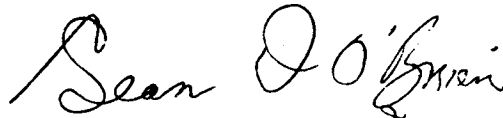
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

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 HAUBEN, M.D.**

**DETERMINATION
AND
ORDER**

BPMC NO. 04-203

PATRICK CARONE, M.D., Chairperson, **RAVINDER MAMTANI, M.D.** and **GARRY SCHWALL, R.P.A.** duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, served as Administrative Officer for the Hearing Committee. The Department of Health appeared by **DONALD P. BERENS, Jr.**, General Counsel, **COURTNEY BERRY, ESQ.**, Associate Counsel, of Counsel. The Respondent appeared by **WOOD & SCHER, ANTHONY Z. SCHER, ESQ.**, of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

STATEMENT OF CHARGES

The accompanying Statement of Charges alleged [redacted] specifications of professional misconduct, including allegations of [redacted] negligence on more than one occasion, [redacted]

[redacted] The charges are more specifically set forth in the Statement of Charges dated May 14, 2004, a copy of which is attached hereto as Appendix I and made a part of this Determination and Order.

SUMMARY OF PROCEEDINGS

Notice of Hearing Date:	May 14, 2004
Pre-Hearing Conference	May 25, 2004
Hearing Dates:	June 8, 2004
	July 20, 2004

WITNESSES

For the Petitioner: Patient A
William A. Frosch, M.D.

For the Respondent: Richard Blum, M.D.
Robert Hauben, M.D.

FINDINGS OF FACT

1. **Robert Hauben M.D., the Respondent, was authorized to practice medicine in New York State on or about September 30, 1965, by the issuance of license number 095463 by the New York State Education Department. (Pet. Ex. 2).**
2. **Respondent treated Patient A in his Southampton office from on or about January 26, 2001 through on or about December 24, 2001.(Pet. Ex. 3; Tr. pp. 20-21; 53-54; 312).**
3. **Patient A's chief complaint(s) on January 26, 2001 were depression and panic attacks with agoraphobia. She had been prescribed Xanax and Prozac by her internist, Dr. Goldfarb, who recommended that she see a psychiatrist to monitor her medication. (Pet. Ex. 3; Tr. pp. 21;75-76).**
4. **Xanax is typically used for the treatment of Anxiety and Panic Disorder. It is a controlled substance with the potential for abuse and dependence. (Tr. pp. 151-152).**
5. **Prior to her treatment with Respondent, Patient A had an addiction to Ultram, which is a pain medication. She went to rehabilitation at the Long Island Center for Recovery in Hampton Bays. Following rehabilitation, she attended 12-step program meetings for approximately one year. (Tr. pp. 22;120-122).**
6. **Patient A informed Respondent of her prior addiction. (Tr. pp. 28; 220; 367).**

T. _____ and Ex. _____ indicate a reference to the transcript of the hearing or to an exhibit in evidence.

7. Shortly after Patient A began treatment with Respondent, he prescribed Xanax for her. (Pet. Ex. 3; Tr. pp. 24; 28;77-82).
8. Respondent did not significantly alter Patient A's treatment. (Pet. Ex. 3; 3A; Tr. pp. 381-382).
9. Patient A filled her prescriptions at three pharmacies: Hampton Liggett's, Genovese/Eckerd and CVS. Her insurance covered Liggett's and Genovese prescriptions. Respondent sent Patient A to CVS in Southampton and gave Patient A cash to pay for Xanax prescriptions at CVS. (Pet. Ex. 4(a)(a1)(b)(c); Tr. pp.26-28;82-91;94-96).
10. The medical records for Patient A met minimum accepted standards because they included history, observations of mental status and prescriptions drugs that were ordered.
11. Respondent gave Patient A several gifts from a company called the Pyramid Collection. These gifts included a cape, a bracelet , a necklace, and a pair of earrings. Patient A lost the earrings but retained the other items. These gifts were unsolicited by Patient A. (Pet. Exs.5; 7; 9A; 9B; 9D; Tr. pp. 41-45; 47-51; 125).
12. Patient A already possessed a cape identical to the one that Respondent purchased for her. (Pet. Ex. 9C; Tr. pp. 45-46; 57-58).
13. Respondent gave Patient A a tongue ring. This was an unsolicited gift. (Pet. Ex. 9E ; Tr. pp. 47-49; 59).
14. Respondent purchased a queen's crown ring and a king's crown ring from the Pyramid Collection for Patient A. (Pet. Exs. 5; 8; Tr. pp. 49-50; 125).

CONCLUSIONS OF LAW

Respondent is charged with [REDACTED] specifications alleging professional misconduct within the meaning of Education Law § 6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but do not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence and the fraudulent practice of medicine.

The following definitions were utilized by the Hearing Committee during its deliberations:

Negligence is failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

Gross negligence is failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by conduct that is egregious or conspicuously bad.

Incompetence is a lack of the skill or knowledge necessary to practice the profession

Using the above-referenced definition as a framework for its deliberations, the Hearing Committee concluded, by a preponderance of the evidence, that one (1)

of the [redacted] specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of deliberations, the Hearing Committee made a determination as to the credibility of various witnesses presented by the parties. Most significantly, Patient A testified for the Department and her testimony is at the core of the charges against Respondent. The Hearing Committee found Patient A to be a less than credible witness. They note that throughout most of her testimony she was calm and controlled except for one instance where she opted to fall apart and become tearful. (T. 37) The Hearing Committee finds this single emotional outburst as orchestrated. They believe that patients in this circumstance would have been more upset throughout the overall course of the testimony. [redacted]

[redacted]

[redacted] As a result , the Hearing Committee found Patient A's testimony to be less than credible.

The Department also offered the testimony of William A. Frosch, M.D., an Emeritus Professor of Psychiatry at the Wyle Medical College of New York University and an attending physician at New York - Presbyterian Hospital. Dr. Frosch is board

certified by the American Board of Psychiatry and Neurology in 1964. (T. 132-133) The Hearing Committee found Dr. Frosch to be a qualified, credible witness who is adequate in clinical experience.

Respondent offered the testimony of Richard Blum, M.D., as his expert witness. Dr. Blum specializes in internal medicine and pharmacology. He has served on various committees in his field. At present he serves on the council of experts of the United States Pharmalical Peer on Therapeutics. (T. 245-246) The Hearing Committee found Dr. Blum to be a qualified witness with extensive experience in pharmacology. They however found his testimony to be very biased to Respondent, too generic in his responses and too defensive on cross-examination.

Respondent also took the stand on his own behalf. The Hearing Committee found Respondent to exhibit an intuitive and interpersonal style that reflects the training of his generation. They found him to be upfront about any shortcomings in his record and thus making him a more credible witness.

[REDACTED]

[REDACTED]

NEGLIGENCE ON MORE THAN ONE OCCASION

Factual Allegations A and A2; A.3 (in part): SUSTAINED

All other Subparagraphs : NOT SUSTAINED

The Hearing Committee finds that Respondent was negligent for giving money to and purchasing gifts for Patient A. Even if Respondent felt sorry for Patient A, his gift giving borders on counter transference and violates his obligation as a psychiatrist to remain objective no matter what the patient's plight. The Hearing Committee further finds that Respondent was negligent for giving Patient A cash to purchase Xanax even if he characterized it as an "unrepaid loans." (T. 325-326, 333-335)

[REDACTED]

The Hearing Committee also finds no evidence to support the allegation that Respondent failed to adequately manage the Patient's use of Xanax. As discussed above, the Committee found no negligence in the prescribing of Xanax and does not really

understand the nature of this charge as written. Had the Department charged Respondent with failure to adequately manage the patient's condition, i.e panic disorder and depression, the Hearing Committee would have sustained that allegation. This is based on the fact that the treatment plan was primarily based on the prescription of Xanax without any reference to a 12 step plan, addressing the abuse by the husband or any other kind of follow up.

[REDACTED]

Based upon the above discussion, the Hearing Committee sustains two acts of negligence as part of the Fourth Specification.

[REDACTED]



DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent's license to practice medicine in New York State should be suspended for a period of three (3) years following the effective date of this Determination and Order. The suspension shall be stayed in its entirety and Respondent shall be placed on probation. While on probation, Respondent shall be required to complete continuing education programs in the areas of Transference and Counter Transference as well as a Management of Panic Disorder and Depression to be equivalent to at least 50 credit hours of AMA Category 1 CME, over and above the recommended minimum standards set by the specialty accrediting body. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the period of probation. The

complete terms of probation are attached to this Determination and Order as Appendix II. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interests of justice.

The Hearing Committee voted for a three year stayed suspension with probation and continuing education because Respondent has demonstrated a weakness in the area of boundary crossing, more specifically transference and counter transference. The Hearing Committee further believes that Respondent's overall management of the patient's panic disorder and depression fell short. [REDACTED]

[REDACTED]

In conclusion, the Hearing Committee believes that a three year stayed probation with a practice monitor effectively safeguards the public health in this instance. Under the totality of the circumstances, the Hearing Committee concludes that this penalty is commensurate with the level and nature of Respondent's professional misconduct.

ORDER

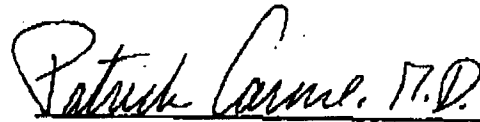
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Fourth Specification of Professional Misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**; and
- [REDACTED]
- [REDACTED]
- [REDACTED]

3. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** for a period of **THREE (3) YEARS**, said suspension to be **STAYED**; and
4. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order; and
5. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: New York, New York

Sept 9, 2004



PATRICK CARONE, M.D.

(Chairperson)

RAVINDER MAMTANI, M.D.

GARRY SCHWALL, R.P.A.

**TO: Courtney Berry Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza- 6th Fl.
New York, NY 10001**

**Anthony Z. Scher, Esq.
Wood & Scher.
14 Harwood Court
Scarsdale, NY 10583**

**Robert Hauben, M.D.
351 Meeting House Lane
Suite G
Southampton, NY 11968**

Terms of Probation

- 1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.**
- 2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.**
- 3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall, personally meet with a person designated by the Director of OPMC as requested by the Director.**
- 4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].**
- 5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.**
- 6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.**
- 7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.**

- 8. Respondent shall enroll in and complete continuing education programs in the area of Transference and Counter Transference and Management of a Patient's Panic Disorder and Depression to be equivalent to at least 50 credit hours of AMA Category 1 CME, over and above the recommended minimum standards set by the specialty accrediting body. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the first year of probation.**

- 9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.**

APPENDIX I

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

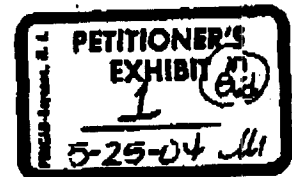
IN THE MATTER

OF

Robert Hauben, M.D.

NOTICE
OF
HEARING

TO: Robert Hauben
351 Meeting House Lane
Suite G
Southampton, N.Y. 11968



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on June 8, 2004, at 10:00 a.m., at the Offices of the New York State Department of Health, 5 Penn Plaza, 6th Floor, New York, N.Y.10001, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for

the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

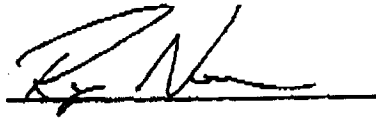
Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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. 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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW
YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT
YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET

**OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU
ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU
IN THIS MATTER.**

DATED: New York, New York
May 19, 2004



**Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct**

**Inquiries should be directed to: Courtney Berry
Associate Counsel
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, N.Y. 10001
(212)268-6806**

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

IN THE MATTER
OF
Robert Hauben, M.D.

STATEMENT
OF
CHARGES

Robert Hauben, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 30, 1965, by the issuance of license number 095463 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent, a psychiatrist, treated Patient A at his office in South Hampton, N.Y. from in or about January 2001 through on or about December 31, 2001.

[REDACTED]

2. Respondent inappropriately gave money to, and purchased gifts for Patient A.

3. Respondent inappropriately [REDACTED] provided funds for Xanax for Patient A.

[REDACTED]

SPECIFICATION OF CHARGES

[REDACTED]

[REDACTED]

[REDACTED]

FOURTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

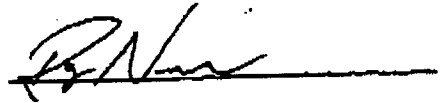
Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

- 4. Paragraph A and its subparagraphs.

[REDACTED]

DATED:

May 14, 2004
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct