



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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

September 19, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Carl Levinson, M.D.
845 Oakgrove Avenue, #220
Menlo Park, California 94025

Mary Borsz Pike, Esq.
96 St. Mark's Place
New York, NY 10009-5801

Frederick Zimmer, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

RE: In the Matter of Carl Levinson, M.D.

Dear Dr. Levinson, Ms. Pike and Mr. Zimmer:

Enclosed please find the Determination and Order (No. BPMC-96-213) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 all action 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.

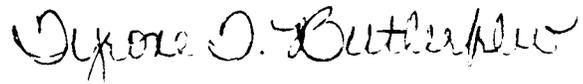
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

**IN THE MATTER
OF
CARL LEVINSON, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-96-213

A Notice of Hearing and Statement of Charges each dated June 10, 1996 was served upon the Respondent, **CARL LEVINSON, M.D.** **WILLIAM P. DILLON, M.D.**, (Chairperson), **WILLIAM W. FALON, M.D.** and **REV. EDWARD J. HAYES**, 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. **JEFFREY ARMON, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on July 24, 1996. The Department of Health appeared by **FREDERICK ZIMMER, ESQ.**, Assistant Counsel. The Respondent appeared and was represented by **MARY BORESZ PIKE, ESQ.** Evidence was received, witnesses were sworn and heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

The 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent 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.

1. Carl Levinson, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on September 15, 1953 by the issuance of license number 074197 by the New York State Education Department. (Ex. 2)
2. Respondent, by a letter of March 8, 1996 from the Medical Board of California (the "California Board"), was publicly reprimanded. The reprimand was issued following the California Board's August 9, 1995 Decision adopting a Conditional Agreement for Public Letter of Reprimand entered into by Respondent and the California Board on or about May 26, 1995. The California Board determined that Respondent's certificate to practice as a physician and surgeon was subject to disciplinary action pursuant to the California Business and Professions Code including but not limited to the following sections of said code;

- a. California Business and Professions Code, §2234(b) [gross negligence], §2234(c) [repeated negligent acts] and/or §2234(d) [incompetence] in that Respondent wrote prescriptions for controlled substances for three non-patients for whom he maintained no medical records and performed no physical examination prior to issuing the prescriptions and for whom, with respect to two of the non-patients, the prescriptions were contraindicated;
 - b. California Business and Professions code, §2242 in that Respondent prescribed dangerous drugs for himself and three individuals without a good faith medical examination and medical indication therefore; and
 - c. California Business and Professions Code, §2238, in that Respondent violated California Health and Safety Code section 11154 by prescribing controlled substances not within the usual course of his medical practice for himself and three individuals and Health and Safety Code §11173 by obtaining a controlled substance for an individual via prescriptions which falsely represented Respondent to be the patient. (Ex. 3)
3. The conduct resulting in the California Board's disciplinary action was more fully set forth in the Accusation of the California Board dated July 13, 1994 attached as Exhibit A to the Conditional Agreement for Public Letter of Reprimand. By entering into the Conditional Agreement, Respondent stipulated that he understood the nature of the charges alleged in the Accusation and that the charges and allegations, if proven, would constitute cause for imposing discipline upon his physician's and surgeon's certificate.
4. By the Conditional Agreement for Public Letter of Reprimand, Respondent's reprimand was made conditional upon his first successfully completing, in accordance with California Business and Professions Code §2293, professional competency exams in gynecology and in drug prescribing laws and practice, an ethics course and a designated course in drug

prescribing and/or pharmacology and therapeutics. Respondent was also required to reimburse the California Board for the actual costs of its investigation and enforcement.

(Ex. 4)

CONCLUSIONS OF LAW

The Following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Medical Board of California took disciplinary action against Respondent's license to practice medicine in that State. The basis for the California Board's action was conduct which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law Sections 6530(2) [practicing the profession fraudulently]; 6530(3) [practicing the profession with negligence on more than one occasion]; 6530(4) [practicing the profession with gross negligence on a particular occasion]; and 6530(5) [practicing the profession with incompetence on more than one occasion]. The Hearing Committee voted to sustain the Specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined to impose no additional penalty on the Respondent's practice in New York. 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, and the imposition of monetary penalties.

Respondent provided documentary evidence and personal testimony which indicated that the three non-patients for whom he wrote prescriptions were his wife and two sons. There was no evidence that he ever prescribed medications for persons other than immediate family members. The dangerous drugs included prescriptions for Ritalin, Ampicillin, Donnatal, Kaopectate paregoric and Valium. The Hearing Committee believed it to be not uncommon for physicians to prescribe for immediate family members and did not consider Respondent's actions to represent serious instances of professional misconduct. The Committee also questioned the level of danger posed by a majority of the medications characterized as "dangerous" in the Accusation and Public Reprimand issued by the California Medical Board.

Respondent testified as to his extensive clinical and teaching experience which was more fully set out in his curriculum vitae. (Ex. A). Respondent also testified as to the limited possibility of returning to practice in New York. The Hearing Committee strongly believed that the continuing medical education requirements imposed by the California Board were more than sufficient in addressing Respondent's acts of misconduct and that no additional penalty was necessary or appropriate based on the circumstances of this matter.

ORDER

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

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED**; and
2. No penalty is imposed on Respondent's license to practice medicine in New York.

DATED: Albany, New York
9/18, 1996


WILLIAM P. DILLON, M.D., Chairperson

WILLIAM W. FALOON, M.D.
REV. EDWARD J. HAYES

TO: Frederick Zimmer, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2438

Mary Boresz Pike, Esq.
96 St. Mark's Place
New York, New York 10009-5801

Carl Levinson, M.D.
845 Oakgrove Avenue, #220
Menlo Park, California 94025

(PTR)

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
CARL LEVINSON, M.D. : PROCEEDING

-----x

TO: CARL LEVINSON, M.D.
845 Oakgrove Avenue, #220
Menlo Park, California 94025

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 10th day of July, 1996 at 10:00 in the forenoon of that day at the OGS Conference Room of the South Mall on the Concourse Level, (right outside the Corning Tower doors), Empire State Plaza, Albany, New York 12230. At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. 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 which 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 3, 1996.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 3, 1996 except the answer must be served on or before July 8, 1996. A copy of the above papers must be served respectively on the above dates 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
June 10, 1996

Peter D. Van Buren

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

Inquiries should be addressed to:

Frederick Zimmer
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
CARL LEVINSON, M.D. : CHARGES

-----X

CARL LEVINSON, M.D., the Respondent, was authorized to practice medicine in New York State on September 15, 1953 by the issuance of license number 074197 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent, by a letter of March 8, 1996 from the Medical Board of California (the "California Board"), was publicly reprimanded. The reprimand was issued following the California Board's August 9, 1995 Decision adopting a Conditional Agreement For Public Letter of Reprimand entered into by Respondent and the California Board. The California Board determined that Respondent's certificate to practice as a physician and surgeon was subject to disciplinary action pursuant to the California Business and Professions Code including but not limited to the following sections of said code;

1. California Business and Professions Code, §2234(b) [gross negligence], §2234(c) [repeated negligent acts] and/or §2234(d) [incompetence] in that Respondent wrote prescriptions for

controlled substances for three non-patients for whom he maintained no medical records and performed no physical examination prior to issuing the prescriptions and for whom, with respect to two of the non-patients, the prescriptions were contraindicated;

2. California Business and Professions Code, §2242 in that Respondent prescribed dangerous drugs for himself and three individuals without a good faith medical examination and medical indication therefore; and

3. California Business and Professions Code, §2238 by violating California regulations, in that Respondent violated California Health and Safety Code 11154 by prescribing controlled substances not within the usual course of his medical practice for himself and three individuals and Health and Safety Code §11173 by obtaining a controlled substance for an individual via prescriptions which falsely represented Respondent to be the patient.

B. The conduct resulting in the California Board's disciplinary action is more fully set forth in the Accusation of the California Board dated July 13, 1994 attached as Exhibit A to the Conditional Agreement for Public Letter of Reprimand. Respondent stipulated that he understood the nature of the charges alleged in the Accusation and that the charges and allegations, if proven, would constitute cause for imposing discipline upon his physician's and surgeon's certificate.

C. By the Conditional Agreement for Public Letter of Reprimand, Respondent's reprimand was made conditional upon his first successfully completing, in accordance with California Business and Professions Code, §2293, professional competency exams in gynecology and in drug prescribing laws and practice, his completion of an ethics course and his completion of a designated course in drug prescribing and/or pharmacology and therapeutics. Respondent was also required to reimburse the California Board for the actual costs of its investigation and enforcement.

D. The conduct resulting in the California Board's disciplinary action against Respondent, would, if committed in New York State constitute professional misconduct under the laws of New York State under the following provisions of New York State law;

1. N.Y. Educ. Law §6530(3) (McKinney Supp. 1996)
[practicing the profession with negligence on more than one occasion]; and/or
2. N.Y. Educ. Law §6530(4) (McKinney Supp. 1996)
[practicing the profession with gross negligence on a particular occasion]; and/or
3. N.Y. Educ. Law §6530(5) (McKinney Supp. 1996)
[practicing the profession with incompetence on more than one occasion]; and/or

4. N.Y. Educ. Law §6530(2) (McKinney Supp. 1996)
[practicing the profession fraudulently].

FIRST SPECIFICATION

Respondent is guilty of professional misconduct under N.Y. Educ. Law §6530 (9) (d) (McKinney Supp. 1996) by reason of his having had disciplinary action taken by the 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 the Petitioner charges:

1. The facts in paragraphs A and A.1, A.2 and/or A.3 and B C, D and D.1, D.2, D.3 and/or D.4.

DATED: *June 10*, 1996
Albany, New York


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