



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

November 30, 2004

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street - 4<sup>th</sup> Floor  
Troy, New York 12180

Barry Gerald Lew, M.D.  
118-72 Beaty Avenue  
Norwalk, CA 90650

Barry Gerald Lew, M.D.  
340 Woodland Drive  
Sedona, Arizona 86336

**RE: In the Matter of Barry Gerald Lew, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 04-270) 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.

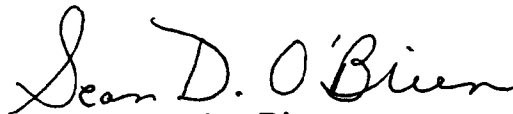
The notice of review served on the Administrative Review Board should be forwarded to:

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,

  
Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah

Enclosure

IN THE MATTER  
OF  
BARRY GERALD LEW, M.D.

DETERMINATION

AND

ORDER

BPMC 04-270

A hearing was held on November 19, 2004, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated October 22, 2004, were served upon the Respondent, **Barry Gerald Lew, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Michael R. Golding, M.D.**, Chairperson, **James D. Hayes II, M.D.**, and **Mr. Irving S. Caplan**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing, either 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.

#### **BACKGROUND**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 Section 6530(9)(a)(iii). Copies of the Notice of Referral Proceeding and the Statement of Charges are 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. Barry Gerald Lew, M.D., the Respondent, was authorized to practice medicine in New York State on August 28, 1963, by the issuance of license number 091051 by the New York State Education Department (Petitioner's Ex. 7).

2. On or about July 30, 2004, in the Superior Court of California, County of Los Angeles, the Respondent was found guilty, based on a plea of guilty, of Counts 1, 6 and 7 of an Information. Count 1 was Conspiracy to Commit Acts Injurious to Public Health and

Morals, Prescribe Controlled Substances Without Legitimate Medical Purpose, and Furnish Controlled Substances Without a Prescription in violation of California Penal Code section 182(a)(1) and (5) and California Health and Safety Code sections 11152(a)(2) and 11153(a). The Court sentenced the Respondent on Count 1 to three years in prison, the payment of \$225,000.00 in restitution and the payment of \$625.00 in fines and fees. Count 6 was Conspiracy to Commit Grand Theft and Cheat and Defraud the Medi-Cal Program, Payment of Unlawful Remuneration, Health Benefits Fraud and Money Laundering in violation of California Penal Code sections 487(a), 182(a)(1) and (a)(4), 186.10, 487 and 550(a), and California Welfare and Institution Code sections 14107 and 14107.2. The Court sentenced the Respondent to three years in prison on Count 6, to be served concurrently with the sentence for Count 1. Count 7 was Grand Theft in violation of California Penal Code section 487. The Court sentenced the Respondent to two years imprisonment on Count 7, to be served concurrently with the sentences on the other counts. (Petitioner's Ex. 8).

### **VOTE OF THE HEARING COMMITTEE**

#### **SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which if committed within this state would have constituted a crime under New York state law..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

The Respondent did not appear at the hearing. The Administrative Law Judge, based on Petitioner's Exhibits 5 and 6, ruled that the Petitioner had served the Respondent with the Notice of Referral Proceeding and the Statement of Charges in

accordance with the requirements of law and that the hearing could proceed on the merits despite the Respondent's absence.

During a pre-hearing conference held immediately before the hearing, the Administrative Law Judge ruled that he would defer a decision on whether four exhibits would be admitted into evidence until the Hearing Committee voted in its deliberations to sustain or reject the Specification against the Respondent. The four exhibits would be taken into evidence at that point only if the Specification was sustained. Since the Hearing Committee voted to sustain the Specification, the four exhibits were admitted into evidence by the Administrative Law Judge. The exhibits are Petitioner's Exhibit 1 (Commissioner's Summary Order dated July 3, 2002, with attachments), Petitioner's Exhibit 2(a) (July 27, 2002, affidavit of service), Petitioner's Exhibit 2(b) (August 2, 2002, affidavit of service), and Petitioner's Exhibit 3 (July 5, 2002, letter from Mr. Bogan to Dr. Lew).

The Respondent was convicted of several crimes in California, resulting in a three-year prison term and the requirement that he pay restitution of \$225,000.00 to his victims. In the Respondent's plea agreement with the California Department of Justice, the Respondent admitted committing the following criminal acts:

...(1) prescribing and dispensing controlled substances to patients without completing a medical examination, (2) receiving "kickbacks" from a pharmaceutical supplier for drugs purchased, (3) prescribing and dispensing controlled substances to an individual who did not have a patient chart, (4) prescribing and dispensing controlled substances to a patient who was participating in a methadone program, (5) prescribing and dispensing controlled substances without recording it in the patient's chart, (6) issuing a prescription in a false name, and (7) furnishing Schedule III and IV drugs without writing a prescription. (Petitioner's Exhibit 8, pp. 3-4).

In the plea agreement, The Respondent also admitted to conspiring to cheat and defraud the Medi-Cal Program by:

...(1) ordering diagnostic tests for patients when such tests were not medically indicated, (2) billing Medi-Cal for comprehensive examinations that were never performed, (3) receiving "rebates" and "kickbacks" for ordering diagnostic tests, (4) admitting Medi-Cal patients to the hospital without medical indication, (5) opening bank accounts to facilitate criminal activity, and (8) [sic] conducting bank transactions to facilitate criminal activity.

This is a long list of egregious criminal activity. Given the fact that the Respondent was sentenced to make restitution in the amount of \$225,000.00, it will be concluded that the criminal activity was repeated on numerous occasions over a long period of time. Since the Respondent did not appear at the hearing, the hearing record contains no evidence of mitigating circumstances, rehabilitation or remorse.

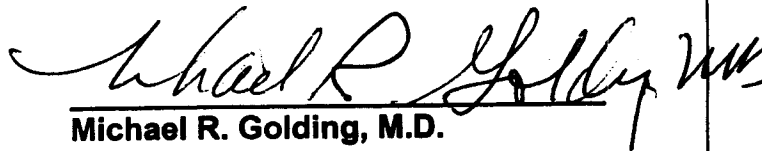
The Petitioner recommended that the Respondent's license to practice medicine be revoked. This Hearing Committee concludes that no lesser sanction is sufficient, given the severity of the Respondent's deviation from the standards of his profession.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

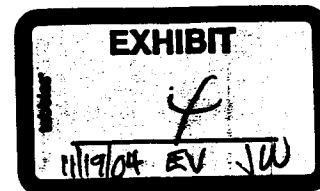
**DATED: Morganville , New Jersey**  
**26 November 2004**

  
**Michael R. Golding, M.D.**

**Chairperson**

**James D. Hayes II, M.D.**  
**Irving S. Caplan**

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



IN THE MATTER

OF

BARRY GERALD LEW, M.D.  
CO-02-03-1203-A

NOTICE OF REFERRAL  
PROCEEDING

ORIGINAL

TO: BARRY GERALD LEW, M.D.  
Inmate No. V47723  
California Correctional Institute  
P.O. Box 1905  
Techachapi, CA 93581

BARRY GERALD LEW, M.D.  
Inmate No. V47723  
California Correctional Institute  
24900 Highway 202  
Techachapi, CA 93561

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. 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 19<sup>th</sup> day of November 2004, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, 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, 5<sup>th</sup> 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 November 9, 2004.

Pursuant to the provisions of N.Y. 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 November 9, 2004, 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

*October 22*, 2004



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

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IN THE MATTER  
OF  
BARRY GERALD LEW, M.D.  
CO-02-03-1203-A

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STATEMENT  
OF  
CHARGES

**BARRY GERALD LEW, M.D.**, the Respondent, was authorized to practice medicine in New York state on August 30, 1963, by the issuance of license number 091051 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about July 30, 2004, in the Superior Court of California, County of Los Angeles, California, Respondent was found guilty, based on a plea of guilty, of 1) Conspiracy to Commit an Act Injurious to Public Health & Morals & the Due Administration of Laws, & Prescribe Controlled Substances Without Legitimate Medical Purpose & Furnish Controlled Substances without a Prescription in violation of California Penal Code sections 182(a)(1) and (5), and California Health and Safety Code sections 11153(a) and 11352(a)(2), a felony and was sentenced to serve three (3) years in state prison, a \$600.00 restitution fine, a \$20.00 court security charge, and \$225,000.00 restitution; 2) Conspiracy to Commit Grand Theft and Cheat and Defraud the Medi-Cal Program, Payment of Unlawful Remuneration Health Benefits Fraud and Money Laundering in violation of California Penal Code sections 487(a), and 182(a)(1) and (a)(4), 186.10, and California Welfare and Institution Code sections 14107 and 14107.2, a felony, and was sentenced to three (3) years in state prison to run concurrent with the other terms of state prison imposed, and 3) Grand Theft in violation of California Penal Code section 487, a felony, and was sentenced to two (2) years confinement in state prison to run concurrent with the other terms of state prison imposed.

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which if committed within this state would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraphs A.

DATED: *Oct. 22*, 2004  
Albany, New York

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