



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*

April 29, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Joel Cohen, M.D.  
10610 Trotters Trail  
Potomac, MD 20854

Joel Cohen, M.D.  
4915 St. Elmo Avenue  
Bethesda, MD 20814

Bryant T. Welch, Esq.  
11261 South Glen Road  
Potomac, MD 20854

Robert Bogan, Esq.  
Paul Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place  
433 River Street – 4<sup>th</sup> Floor  
Troy, New York 12180

**RE: In the Matter of Joel Cohen, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-124) 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.

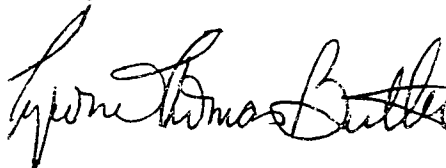
The notice of review served on the Administrative Review Board should be forwarded to:

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, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

COPY

IN THE MATTER  
OF  
JOEL COHEN, M.D.

DETERMINATION  
AND  
ORDER

BPMC-02-124

A hearing was held on April 17, 2002, 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 30, 2001, were served upon the Respondent, **Joel Cohen, M.D.** **Peter D. Kane, M.D.**, Chairperson, **Ernst A. Kopp, M.D.**, and **Mr. John D. Tarrant**, 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. **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.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Bryant T. Welch, Esq.**, 11261 South Glen Road, Potomac, MD 20854.

Evidence was received and transcripts of these proceedings were made.

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

## STATEMENT OF CASE

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)(b) and (d). 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:	Joel Cohen, M.D.

### 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. Joel Cohen, M.D., the Respondent, was authorized to practice medicine in New York State on July 8, 1968, by the issuance of license number 101617 by the New York State Education Department (Petitioner's Ex. 4).

2. On July 11, 2001, the Maryland Board of Physician Quality Assurance ("Maryland Board"), by a Consent Order ("Maryland Order"), reprimanded the Respondent, placed him on probation for two years, required him to undergo a psychiatric evaluation, and imposed other conditions, based on, in the practice of psychiatry, immoral or unprofessional conduct (Petitioner's Ex. 5).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;" and
- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

The Statement of Charges also alleges that the Respondent's conduct, had it occurred in New York State, would have violated New York Education Law Section 6530(44), which defines professional misconduct as, "In the practice of psychiatry, (a) any physical contact of a sexual nature between licensee and patient..." The Maryland Order does not provide a factual basis for this allegation. The Maryland Order makes findings that the Respondent is engaged to the patient in question and is "romantically involved" with her (Petitioner's Ex. 5, p. 4), but does not address the subject of whether there has been "physical contact of a sexual nature" between them.

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

#### **FIRST SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(b) 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..."

VOTE: Sustained (3-0)

#### SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a 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..."

VOTE: Sustained (3-0)

#### HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Respondent on several occasions prescribed medications for the woman to whom he was engaged and that some of these medications were psychotropic drugs. The Respondent kept no medical records regarding his fiancée. The Respondent contended that since his personal relationship pre-existed the prescribing of these drugs, his fiancée was not really his patient when he prescribed the medications. The Hearing Committee rejects this contention. When a physician writes a prescription for a person, that person becomes the physician's patient, no matter what the personal or familial relationship between the two is. The Respondent, by providing medical care to someone so personally close to him, and, in particular, by providing psychotropic drugs to someone so personally close to him, practiced his profession negligently. Such medications should be prescribed only by a physician who has no emotional ties to the patient and, therefore, can determine the necessity for the prescriptions objectively.

The Hearing Committee recognizes, however, that there are extenuating circumstances in this case. The Respondent's fiancée, who has bipolar disorder, had been treated successfully by a psychiatrist. When treatment by that psychiatrist ended because he moved out of town, the fiancée became very resistant to treatment by anyone else, repeatedly terminating therapy with other therapists shortly after initiation. The result of the termination of therapy with these other therapists was interruption in the prescription of the medications that controlled her bipolar disorder. The Respondent, knowing that the result of his fiancée's failure to take her medications would be a debilitating depression and being repeatedly unable to persuade her to seek treatment from another psychiatrist, prescribed the same medications that her original psychiatrist had prescribed. He did this because he was at his wit's end and feared the consequences for his fiancée's health if he did not write the prescriptions.

The Hearing Committee observed the Respondent throughout his testimony and found credible his assurances that he will never again make the same mistake. The Hearing Committee also takes favorable notice of the fact that the Respondent has conscientiously complied with the requirements of the terms of probation imposed by the Maryland Board.

Given all the factors described above and the fact that the Respondent does not intend to practice medicine in New York State in the foreseeable future, the minor penalty imposed in the Order, below, should provide sufficient protection for the people of the State of New York.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent shall comply fully with the terms of the Maryland Order and any extension or modification thereof.

2. The Respondent shall provide a written authorization for the Maryland Board to provide the Petitioner's Office of Professional Medical Conduct ("OPMC") with any information or documentation requested by OPMC to enable OPMC to determine whether the Respondent is in compliance with the Maryland Order.

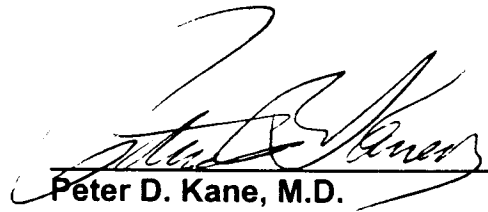
3. The Respondent shall submit quarterly a signed compliance declaration to OPMC, which truthfully attests whether the Respondent has been in compliance with the Maryland Order during the declaration period specified.

4. If the Respondent determines that he wants to practice medicine in New York State, he must notify OPMC 90 days prior to the initiation of practice. The notification shall be accompanied by a letter from a treating psychiatrist stating that the Respondent suffers from no psychological or emotional problem that compromises his ability to provided competent medical care.

4. 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: Cazenovia, New York

4/26/02, 2002



Peter D. Kane, M.D.

Chairperson

Ernst A. Kopp, M.D.

John D. Torrant



# **APPENDIX I**

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

EXHIBIT  
1  
JEC 4/17/02

IN THE MATTER  
OF  
JOEL COHEN, M.D.  
CO-01-08-1475-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: JOEL COHEN, M.D.  
10610 Trotters Trail  
Potomac, MD 20854

JOEL COHEN, M.D.  
4915 St. Elmo Avenue  
Bethesda, MD 20814

**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 18<sup>th</sup> day of December 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, 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. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of

Adjudication") as well as the Department of Health attorney indicated below, on or before December 10, 2001.

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 December 10, 2001, 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 30*, 2001



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  
JOEL COHEN, M.D.  
CO-01-08-1475-A

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STATEMENT  
OF  
CHARGES

JOEL COHEN, M.D., the Respondent, was authorized to practice medicine in New York state on July 8, 1968, by the issuance of license number 101617 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about July 11, 2001, the Board of Physician Quality Assurance of the State of Maryland, (hereinafter "Maryland Board"), by a Consent Order (hereinafter "Maryland Order"), reprimanded Respondent, placed him on probation for two (2) years, required him to undergo a psychiatric evaluation, and imposed other conditions, based on, in the practice of psychiatry, immoral or unprofessional conduct.

B. The conduct resulting in the Maryland Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation care and treatment); and/or
3. New York Education Law §6530(44) (in the practice of psychiatry, any physical contact of a sexual nature between licensee and patient).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) 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, in that Petitioner charges:


1. The facts in Paragraphs A and/or B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action taken after a disciplinary action was instituted by a 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 Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *October 30*, 2001  
Albany, New York

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