



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

Karen Schimke  
Executive Deputy Commissioner

RECEIVED

MAR 10 1995

OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

March 10, 1995

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul Stein, Esq.  
Associate Counsel  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Lawrence S. Forman, D.O.  
1053 Cardinal Lane  
Cherry Hill, New Jersey 08003

**RE: In the Matter of Lawrence S. Forman, D.O.**

Effective Date 03/17/95

Dear Mr. Stein and Mr. Forman:

Enclosed please find the Determination and Order (No. 95-55) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

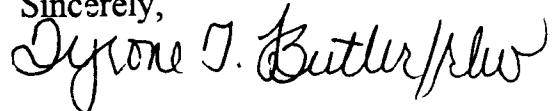
All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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,  


Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**IN THE MATTER  
OF  
LAWRENCE S. FORMAN, D.O.**

**DETERMINATION  
AND  
ORDER**

BPMC-95-55

A Notice of Hearing and Statement of Charges, both dated October 3, 1994, were served upon the Respondent, **LAWRENCE S. FORMAN, M.D.** **PETER D. KUEMMEL, R.P.A.**, (Chair), **FLORENCE KAVALER, M.D.** and **THERESE LYNCH, M.D.**, 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. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on December 1, 1994. The Department of Health appeared by **PAUL STEIN, ESQ.**, Associate Counsel. The Respondent did not appear and was not represented by 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 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 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 parentheses 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. Respondent was authorized to practice medicine in New York State on May 22, 1975 by the issuance of license number 123774 by the New York State Education Department.  
(Pet. Ex. 2)
2. On or about December 19, 1991, the New Jersey Board of Medical Examiners issued an Order of Temporary Suspension of Licensure of Respondent's license pursuant to a Ten Count Complaint which alleged that Respondent dispensed controlled dangerous substances (generally, the sympathomimetic amines Phentermine, a Schedule IV Controlled Dangerous Substance, and Phendimetrazine, a Schedule III Controlled Dangerous Substance) to nine (9) of his bariatric patients indiscriminately and/or without proper regard for the health and safety of those patients. The Tenth Count of the Complaint alleges that Respondent admitted ordering and utilizing 300 dosage units of Biphетamine and 600 dosage units of Percodan

both Schedule II CDS, for himself and his family without any medical records. The Board found that "Respondent has demonstrated such a lack of judgment in his weight control practice and his approach to the practice of medicine in general, that his continued practice would palpably constitute a clear and imminent danger to the public of New Jersey." As a result of the aforementioned Order, Respondent's license was temporarily suspended pending the disposition of the charges in the Administrative Complaint or until such time as the Board has reviewed an application to reconsider the temporary suspension, which shall include the following: receipt of results of a Focused Education Evaluation Program; an evaluation of randomly selected patient medical records; surrender of Respondent's CDS license and agreement not to accept any new patients. (Pet. Exs. 4, 6)

3. On or about April 28, 1993, the Commonwealth of Pennsylvania, Department of State, State Board of Osteopathic Medicine, issued an Order, based on a Consent Agreement later filed May 12, 1993 and found that Respondent had violated various provisions of the Osteopathic Medical Practice Act "by having a license to practice Osteopathic medicine and surgery suspended by the proper licensing authority of another state." As a result of the aforementioned Order, Respondent's license to practice Osteopathic medicine and surgery in Pennsylvania was revoked, with the revocation being stayed in favor of a three (3) year period of probation subject to various conditions including: prohibition on the practice of bariatric medicine; prohibition on the prescription of Schedule II, III, IV or V controlled substances for the purpose of weight control or reduction and random selection and review of patient records. (Pet. Ex. 7, 8)

#### 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 Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was disciplined by both the New Jersey Board of Medical Examiners and the Pennsylvania State Board of Osteopathic Medicine for the inappropriate treatment of patients through abuse of controlled substances in his weight control practice and failure to maintain adequate medical records for personal use of controlled substances. Education Law Section 6530(9)(d) defines professional misconduct in part as having disciplinary action taken against his or her license... "after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State." As a result, the Hearing Committee voted to sustain the First and Second 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, determined unanimously that Respondent's license to practice medicine in New York should be revoked. 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 did not appear at the hearing, but submitted an Affidavit on his own behalf. (Resp. A) It is clear from Respondent's record that he has practiced medicine in New Jersey in a grossly negligent and incompetent manner. Respondent has practiced bariatric medicine without proper education and training, exposed patients to prolonged and indiscriminate use of controlled dangerous substances and failed to closely and properly monitor patients during the course of treatment. In addition, he personally abused drugs. After suspension by the New Jersey Board of

Medical Examiners, Respondent was required to undergo physical and psychiatric exams as well as an evaluation of his clinical competency. The Medical and Chirurgical Faculty of Maryland in Baltimore issued a report which was highly critical of Respondent's "clinical knowledge and judgment, ability to evaluate and manage cases, referral patterns, and what they saw as venal practice directed almost exclusively toward making money without concern for his patient's welfare." (Resp. A, p.2) Respondent's affidavit indicates that since his suspension, he has undergone extensive retraining which included an eight (8) week Refresher Retraining Program at the Medical College of Pennsylvania and a drug and substance abuse awareness course. Respondent then presented himself to the Colorado Personalized Education for Physicians (CPEP) for an assessment in hopes of reinstating his New Jersey license. The overall results of CPEP's assessment of Respondent "were passable, with some areas demonstrating strength and others still needing improvement." (Resp. A p. 10)

Respondent's affidavit further states that he anticipates that he will resume practicing medicine in New Jersey, but that he does not currently plan on practicing in the State of New York. Considering the severity of Respondent's past misconduct and the assessment that he still is in need of improvement, the Hearing Committee feels no obligation to allow Respondent's request of a restricted right to practice medicine in New York State. If at sometime in the future, Respondent is able to demonstrate a total rehabilitation from his professional, as well as personal problems, he may re-apply for his license to practice medicine in New York. Under the totality of the circumstances, revocation is the appropriate sanction in this instance.



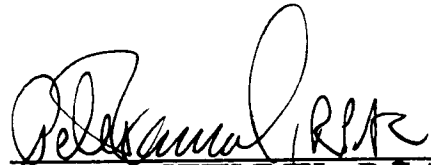
**ORDER**

Based upon 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

2. Respondent's license to practice medicine in New York State be, and hereby is, **REVOKED**.

**DATED: Albany, New York**  
March 7, 1995



**PETER D. KUEMME, R.C.A. (Chair)**

**FLORENCE KAVALER, M.D.**  
**THERESE LYNCH, M.D.**

**TO: Paul Stein, Esq.**  
Associate Counsel  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, NY 10001

Lawrence S. Forman, D.O.  
1053 Cardinal Lane  
Cherry Hill, NJ 08003

**APPENDIX I**





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 October 19, 1994.

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 October 19, 1994, 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 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: New York, New York  
*October 3*, 1994



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Chris Stern Hyman  
Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

PAUL STEIN  
Associate Counsel  
212-613-2617

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

-----X

IN THE MATTER	:	STATEMENT
OF	:	OF
LAWRENCE S. FORMAN, D.O.	:	CHARGES

-----X

LAWRENCE S. FORMAN, D.O., the Respondent, was authorized to practice medicine in New York State on May 22, 1975 by the issuance of license number 123774 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in the State of New York. His most recent registration is for the period January 1, 1991 through December 31, 1992. His most recent registration address is 2051 Springdale Road, Cherry Hill, New Jersey 08003.

FIRST SPECIFICATION

I. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530 (9) (d) (McKinney Supp. 1994), in that he had his license to practice medicine, revoked, suspended or had other 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 revocation, suspension or other disciplinary action involving the license would, if committed



in New York State, constitute professional misconduct under the laws of New York State, specifically:

A. The State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners ("the New Jersey Board"), on December 19, 1991 issued an Order of Temporary Suspension of Licensure ("the Order"), effective, nunc pro tunc, on December 11, 1991, finding, inter alia: Respondent's treatment methodology to be patently dangerous; Respondent's failure to properly monitor patients both before and during therapy poses incalculable and grave risks to his patients; Respondent repeatedly failed to properly evaluate his bariatric patients; Respondent repeatedly failed to closely and properly monitor patients during the course of treatment; Respondent's patients were exposed to the prolonged and indiscriminate use of controlled dangerous substances (sympathomimetic amines) that had the potential to cause serious harm when alternative measures of diet control that would have been inherently less dangerous to those patients were available and were not first tried by Respondent; Respondent failed to exclude high risk patients who could be harmed by the treatment regimen from his bariatric practice (i.e., diabetics, patients with heart disease, angina or those developing hypertension on the regimen); Respondent permitted R.N.'s and L.P.N.'s to dispense controlled substances without an evaluation or examination

by him, without his presence, and to persons other than the patient; Respondent lacks an understanding of the addiction potential of controlled substances and disregards habituation; Respondent exhibited poor judgment in prescribing and utilizing for himself at least 400 Percodan and in prescribing for himself and using Biphedamine for weight loss despite knowledge that such use is prohibited; Respondent is not even aware of the basic protocol for immunization despite the fact that he practices pediatrics; Respondent has demonstrated such a lack of judgment in his weight control practice and his approach to the practice of medicine in general that his continued practice would palpably constitute a clear and imminent danger to the public of New Jersey; and Respondent's willingness to cease prescribing controlled substances for weight control is not sufficient to eliminate the danger.

B. Pursuant to the terms of the above-mentioned Order,

Respondent was sanctioned, inter alia, as follows:

1. Temporary suspension of Respondent's license to practice pending disposition of the charges in the Administrative Complaint or until such time as the Board has reviewed an application to reconsider the temporary suspension, which shall include the following:

- a. The results of a Focused Education Evaluation Program including an evaluation of Respondent's psychiatric condition, physical condition and competency, to be performed at his expense, by an organization chosen from a list of at least three options provided to him by the Board.

- b. An evaluation of at least 30 randomly selected patient medical records of Respondent's non-bariatric practice which shall include a sampling of pediatric through geriatric patients. Additional charts may be required at the Board's option.
2. During the period from the date of the hearing to the date on which the temporary suspension shall take effect, Respondent shall not accept any new patients.
  3. Effective upon pronouncement on December 11, 1991, Dr. Forman shall neither prescribe nor dispense any controlled dangerous substances. Respondent shall immediately surrender his New Jersey CDS license. Respondent shall immediately begin to make appropriate arrangements for the transfer of his patients to other physicians.
- C. These acts, if committed in New York State, would constitute professional misconduct under the laws of New York State as follows:
1. "Practicing the profession fraudulently or beyond its authorized scope" (Educ. Law sec. 6530 (2) (McKinney Supp. 1994)); and/or
  2. "Practicing the profession with gross negligence on a particular occasion" (Educ. Law sec. 6530 (4) (McKinney Supp. 1994)); and/or
  3. "Practicing the profession with gross incompetence" (Educ. Law sec. 6530 (6) (McKinney Supp. 1994)); and/or
  4. "Practicing the profession with negligence on more than one occasion" (Educ. Law sec. 6530 (3) (McKinney Supp. 1994)); and/or
  5. "Practicing the profession with incompetence on more than one occasion" (Educ. Law sec. 6530 (5) (McKinney Supp. 1994)); and/or
  6. "Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure, to perform them" (Educ. Law sec. 6530 (25) (McKinney Supp. 1994)).

SECOND SPECIFICATION

II. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530 (9) (d) (McKinney Supp. 1994), in that he had his license to practice medicine, revoked, suspended or had other 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 revocation, suspension or other disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically:

- A. The Commonwealth of Pennsylvania, Department of State, State Board of Osteopathic Medicine (the "Pennsylvania Board"), on April 28, 1993, issued an Order, based on a Consent Agreement later filed May 12, 1993, finding that Respondent had violated the Osteopathic Medical Practice Act of October 5, 1978, P.L. 1109, No. 261, as amended, at 63 P.S. sec. 271.15(a)(4), by having a license to practice osteopathic medicine and surgery suspended by the proper licensing authority of another state (New Jersey).
- B. Pursuant to the terms of the above-mentioned Order, Respondent's license to practice osteopathic medicine and surgery was revoked, said revocation being stayed in favor of a three year period of probation subject to various terms and conditions, including:


1. The Respondent shall not engage in the practice of bariatric medicine, nor prescribe any Schedule II, III, IV or V controlled substances for the purpose of weight control or weight reduction.
2. The Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its agents or employees, in its supervision and investigation of the Respondent's compliance with the terms and conditions of this probation. Further, the Respondent will permit the random selection and review of patient records every six months by a designee of the Bureau of Professional and Occupational Affairs to ensure compliance with the restriction forbidding Respondent from practicing bariatric medicine and prescribing Schedule II, III, IV, or V controlled substances for the purpose of weight control or weight reduction.

C. These acts, if committed in New York State, would constitute professional misconduct under the laws of New York State as follows:

1. Having his license to practice medicine, revoked, suspended or having other 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 revocation, suspension or other disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State (Education Law sec. 6530 (9) (d) (McKinney Supp. 1994); and
2. "Practicing the profession fraudulently or beyond its authorized scope" (Educ. Law sec. 6530 (2) (McKinney Supp. 1994)); and/or
3. "Practicing the profession with gross negligence on a particular occasion" (Educ. Law sec. 6530 (4) (McKinney Supp. 1994)); and/or
4. "Practicing the profession with gross incompetence" (Educ. Law sec. 6530 (6) (McKinney Supp. 1994)); and/or
5. "Practicing the profession with negligence on more than one occasion" (Educ. Law sec. 6530 (3) (McKinney Supp. 1994)); and/or

6. "Practicing the profession with incompetence on more than one occasion" (Educ. Law sec. 6530 (5) (McKinney Supp. 1994)); and/or
7. "Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure, to perform them" (Educ. Law sec. 6530 (25) (McKinney Supp. 1994)).

Dated: New York, New York  
October 3, 1994

  
CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct

## SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 of Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.



51.5 Answer to Responsive Pleading. A party may serve a response to the allegations of the Department.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, documents or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation

and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public Health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer's Report. In matters governed by Public Health Law Sections 230, 230-a and 230-b, the final report should be submitted not more than 52 days after completion of the hearing if service is effectuated by mail and not more than 58 days of service if effectuated personally. In all other matters, the Hearing Officer, within 60 days of the completion of the hearing, should submit a report.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order or, within 15 days of a date a report of the hearing committee and proposed recommendation for hearings conducted pursuant to Public Health Law Section 230 is sent to the parties, any party may submit exceptions to said report and proposed order to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed.

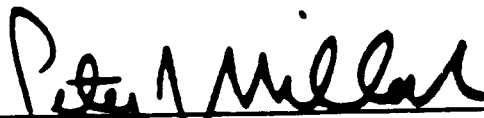
51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

51.16 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public Health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York  
February 7, 1992



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PETER J. MILLOCK  
General Counsel