



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

December 1, 1994

RECEIVED
DEC 1 1994
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Elizabeth C. Hogan, Esq.
Assistant Counsel
New York State Department of Health
Tower Building - Room 2429
Albany, New York 12237

Larry Roy Leichter, M.D.
3419 North 31 Terrace
Hollywood, Florida 33021

RE: In the Matter of Larry Roy Leichter, M.D.

Dear Ms. Hogan and Mr. Leichter:

Enclosed please find the Determination and Order (No. 94-251) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he 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

-----X
IN THE MATTER : DETERMINATION
OF : AND
LARRY ROY LEICHTER, M.D. : ORDER
-----X
BPMC-94-251

A Notice of Referral Proceeding and Statement of Charges, both dated September 9, 1994, were served upon the Respondent, Larry Roy Leichter, M.D. ALBERT L. BARTOLETTI, M.D. (Chair), AARON STEVENS, 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. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Elizabeth C. Hogan, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. A hearing was held on October 19, 1994. 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 §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 §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. Larry Roy Leichter, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York

State on July 15, 1975 by the issuance of license number 124567 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. (Pet. Ex. #3).

2. The State of Florida Department of Professional Regulation (hereinafter the "Florida Board"), by Final Order dated April 10, 1992 and pursuant to a Consent Agreement dated March 6, 1992 entered into between the Florida Board and Respondent, took disciplinary action against Respondent. The Florida Board suspended Respondent for an indefinite period of time pending successful completion of a program with the Physicians Recovery Network, imposed a fine in the amount of \$1,500.00 and imposed a two year term of probation to begin upon the resumption of Respondent's medical practice. (Pet. Ex. #4).

3. The conduct underlying the Florida Board's disciplinary action against Respondent included the prescribing of morphine on multiple occasions and in such quantities as to make Patient A addicted; the failure to keep written medical records justifying the course of treatment of Patient A, including the failure to document hospital progress notes from September 2, 1988 through September 24, 1988; the continued prescribing of morphine to Patient A despite the fact that the records reflected Respondent's awareness of the patient's addiction; the failure to examine Patient A and to document the findings of her condition prior to discharge from the hospital on October 2, 1988. The patient died on October 4, 1988. (Pet. 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 Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was disciplined by the Florida Board following the institution of disciplinary proceedings against him. The Hearing Committee further concluded that Respondent's conduct, if committed in New York State, would constitute professional misconduct in violation of New York Education Law §6530(3) [negligence on more than one occasion]; §6530(4) [gross negligence]; and §6530(32) [failing to maintain a record which accurately reflects the evaluation and treatment of the patient]. As a result, the Hearing Committee voted to sustain the Specification of professional misconduct contained in 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 that Respondent's license to practice medicine in New York State should be suspended until Respondent successfully completes the suspension and period of probation imposed by the Florida Board. In addition, the Committee determined that a fine in the amount of \$2,500.00 should be imposed upon Respondent. 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.

The record indicates that Respondent seriously mismanaged the use of morphine by Patient A, causing the patient to become addicted to the drug. In addition, Respondent failed to properly document his care and treatment of the patient. As a result, a significant sanction is warranted. However, due to the sparseness of the record developed in this case, there is insufficient evidence to justify the revocation of Respondent's license.

The Hearing Committee has an independent responsibility to impose a sanction upon Respondent's New York medical license based upon the underlying Florida disciplinary action. Nevertheless, the Committee takes note of the sanction imposed by the Florida Board. The Florida Board suspended Respondent's license until such time as he successfully completed a program with the Physicians Recovery Network, to be followed by a two-year term of supervised probation.

Respondent has indicated that he has now retired from the active practice of medicine and is currently attending law school with the intention practicing law. (See, Respondent's Exhibit C). However, it is not beyond the realm of possibility that Respondent may someday decide to resume the practice of medicine. Given the fact that Respondent resides in Florida and that the Florida Board is in the best position to adequately monitor his medical practice, the Hearing Committee unanimously determined that Respondent's New York medical license should be

suspended until such time as he has satisfied all terms of the Florida Consent Agreement, including the two-year period of supervised probation. In addition, the Committee determined that a fine in the amount of \$2,500.00 should be imposed upon Respondent. The Hearing Committee further determined that this penalty strikes the appropriate balance between the need to punish Respondent and to protect the people of New York State.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is

SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** until such time as Respondent successfully completes the suspension and two-year term of probation imposed by the Florida Board. Evidence of said successful completion shall consist of certified records of the Florida Department of Professional Regulation documenting the satisfaction of all probationary terms and shall be submitted to the Director of the Office of Professional Medical Conduct prior to the resumption of Respondent's medical practice in New York State;

3. A fine in the amount of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** be and hereby is imposed against Respondent. Payment of the aforesaid sum shall be made to the Bureau of Accounts Management, New York State Department of Health, Erastus

Corning Tower Building, Room 1245, Empire State Plaza, Albany,
New York 12237, within thirty (30) days of the effective date of
this Order;

4. Any civil penalty not paid by the date prescribed
herein shall be subject to all provisions of law relating to debt
collection by the State of New York. This includes but is not
limited to the imposition of interest, late payment charges and
collection fees; referral to the New York State Department of
Taxation and Finance for collection; and non-renewal of permits
or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001;
Executive Law §32).

DATED: Albany, New York
25 Nov , 1994

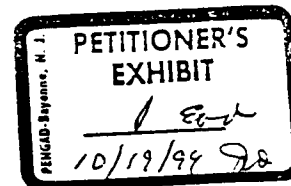

ALBERT L. BARTOLETTI, M.D. (CHAIR)

AARON STEVENS, M.D.
REV. EDWARD J. HAYES

TO: Elizabeth C. Hogan, Esq.
Assistant Counsel
New York State Department of Health
Tower Building - Room 2429
Albany, New York 12237

Larry Roy Leichter, M.D.
3419 North 31 Terrace
Hollywood, Florida 33021

APPENDIX I



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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
LARRY ROY LEICHTER, M.D. : PROCEEDING

-----X

TO: LARRY ROY LEICHTER, M.D.
3419 North 31 Terrace
Hollywood, Florida 33021

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 19th day of October, 1994 at 10:00 o'clock in the forenoon of that day at Cultural Education Building, Meeting Room B, Concourse Level, Empire State Plaza, Albany, New York 12220.

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 October 11, 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 11, 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 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
September 9, 1994

Peter D. Van Buren

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

Inquiries should be addressed to:

Elizabeth C. Hogan
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

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IN THE MATTER : STATEMENT
OF : OF
LARRY ROY LEICHTER, M.D. : CHARGES

-----X

LARRY ROY LEICHTER, M.D., the Respondent, was authorized to practice medicine in New York State on July 15, 1975, by the issuance of license number 124567 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. The State of Florida Department of Professional Regulation, by Final Order dated April 10, 1992 and pursuant to a Consent Agreement dated March 6, 1992 entered into between the Department and the Respondent and an Administrative Complaint dated May 27, 1991 took disciplinary action against Respondent. The Department suspended Respondent for ~~two (2) years~~ for an indefinite period of time pending successful completion of a program within the Physicians Recovery Network, fined \$1500.00, imposed a two (2) year term of probation to begin upon Respondent's resumption of practice, and imposed terms of probation including indirect practice supervision and a restriction of his prescribing Schedule II-V controlled substances.

amended by Pet.
10/19/94 - JLL

2. The conduct underlying the Florida Department's imposition of discipline upon Respondent was the prescribing of morphine on such multiple occasions in such quantities as to make Patient A addicted, in violation of Florida Statutes §458.331(1)(g); the failure to keep written medical records justifying the course of treatment of Patient A, including the failure to document in hospital progress notes from September 2, 1988 through September 24, 1988, and the continued prescribing of morphine while the record reflected awareness of Patient A's addiction, in violation of Florida Statutes §458.331(1)(m); and the gross repeated malpractice of the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, including the above referenced conduct plus the failure to examine Patient A and to document the findings of her condition prior to hospital discharge on October 2, 1988. The patient died on October 4, 1988.

3. The conduct underlying the Florida Department's imposition of discipline, would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §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/or §6530(32) [failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient].

SPECIFICATION

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994) by reason of his having his or her license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the 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, in that Petitioner charges:

1. The facts in Paragraphs 1, 2 and 3.

DATED: *Sept. 9*, 1994
Albany, New York

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