



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

October 11, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Jeffrey E. Bigman, Esq.
Smith, Hood, Perkins, Loucks,
Stout & Orginger
444 Seabreeze Boulevard, Suite 900
Daytona Beach, Florida 32118

Stephen H. Levine, M.D.
647 North Beach Street
Ormond Beach, Florida 32174

Stephen H. Levine, M.D.
873 Sterthaus Avenue
Suite 210
Ormond Beach, Florida 32174

RE: In the Matter of Stephen H. Levine, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-234) 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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER
OF
STEPHEN H. LEVINE, M.D.

DETERMINATION

AND

ORDER

BPMC #01-234

A hearing was held on September 28, 2001, 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 June 15, 2001, were served upon the Respondent, **Stephen H. Levine, M.D.** **Donald Cherr, M.D.**, Chairperson, **Ernst A. Kopp, M.D.**, and **Mr. John O. Raymond**, 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 **Jeffrey E. Bigman, Esq.**, Smith, Hood, Perkins, Loucks, Stout & Orfinger, 444 Seabreeze Boulevard, Suite 900, Daytona Beach, Florida 32118.

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)(d). A copy of the Notice of Referral Proceeding and the Statement of Charges is 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. Stephen H. Levine, M.D., the Respondent, was authorized to practice medicine in New York State on October 5, 1979, by the issuance of license number 140020 by the New York State Education Department (Petitioner's Ex. 4).

2. On December 13, 2000, the State of Florida Board of Medicine, by a Final Order ("Florida Order"), fined the Respondent \$3,000.00, required him to maintain a contract with the Physicians Recovery Network, and required him to pay \$1,206.00 in investigation costs. The Order was based on the Respondent's having prescribed Stadol NS (butorphanol tartrate), for his wife on 33 occasions when, in fact, the prescribed medications were intended for the Respondent and used by the Respondent. (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 pursuant to:

1. New York Education Law Section 6530(2) (practicing the profession fraudulently);
2. New York Education Law Section 6530(8) (being dependent on or a habitual user of narcotics or other drugs having similar effects);
3. New York Education Law Section 6530(16) (willful failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine); and
4. New York Education Law Section 6530(32) (failing to maintain accurate records).

Contrary to the Statement of Charges, the Hearing Committee concludes that the hearing record does not support a finding under New York Education Law Section 6530(20), moral unfitness. The Hearing Committee concludes that the Respondent's infraction was the result of poor judgment and an inability to deal prudently with a painful physical condition and the medications he took for it, not moral unfitness.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in 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 33 occasions, wrote prescriptions for a controlled substance, Stadol, in his wife's name, but used the Stadol himself. This, obviously, is a violation of the Respondent's responsibilities as a physician. Both the Respondent's addiction to Stadol and the dishonest and illegal method by which he obtained it are causes for serious concern. However, the Hearing Committee concludes that there is no need for a severe penalty in this case.

There has been no misuse of drugs since the Respondent sought professional help for his problem in 1997. After inpatient therapy that year, the Respondent entered a five-year program with the Physicians Recovery Network (Respondent's Ex. A). On August 14, 2001, Raymond M. Pomm, M.D., the Medical Director of the Physicians Recovery Network, wrote a letter to the Petitioner's attorney (Respondent's Ex. B). In that letter, Dr. Pomm stated that the Respondent "is an active and successful participant in the Physicians Recovery Network" and that he "remains in complete compliance with all requirements."

It is also of some importance that the Respondent's professional misconduct was the result of his inability to deal with substantial pain resulting from an accident. The drug

use was not for recreational purposes and the illegal prescriptions were not for profit. It is also noteworthy that subsequent to the termination of Stadol use in 1997, the Respondent had surgery that has eliminated the pain that motivated the Respondent's Stadol use.

As the Petitioner acknowledged in its closing statement at the hearing, this is not a case that requires punishment. The terms in the Order, below, should be sufficient protection for the patients of New York State.

ORDER

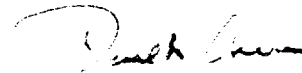
IT IS HEREBY ORDERED THAT:

1. If the Respondent successfully completes his five-year program with the Physicians Recovery Network prior to returning to the practice of medicine in New York State, no penalty will be imposed. Prior to the resumption of practice in New York State, the Respondent must provide documentation of the successful completion of this program to the Petitioner's Office of Professional Medical Conduct (NYS Department of Health, Hedley Park Place, 433 River Street, Troy, New York 12180-2299).

2. If the Respondent returns to the practice of medicine in New York State prior to the completion of the five-year program with the Physicians Recovery Network, he must first enter a similar program for the balance of the five-year period. The new program must be approved by the Office of Professional Medical Conduct prior to the resumption of medical practice in New York State.

3. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

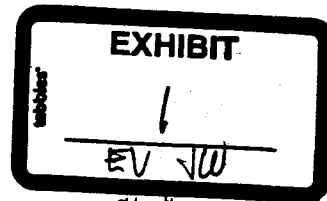
DATED: Rochester, New York
5 October, 2001



Donald Cherr, M.D.
Chairperson

Ernst A. Kopp, M.D.
John O. Raymond

APPENDIX I



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

IN THE MATTER
OF
STEPHEN H. LEVINE, M.D.
CO-01-02-0606-A

NOTICE OF
REFERRAL
PROCEEDING

TO: STEPHEN H. LEVINE, M.D.
647 North Beach Street
Ormond Beach, FL 32174

STEPHEN H. LEVINE, M.D.
873 Sterthaus Avenue
Suite 210
Ormond Beach, FL 32174

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 18th day of July 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th 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, 5th 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 July 9, 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 July 9, 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

June 15, 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

IN THE MATTER
OF
STEPHEN H. LEVINE, M.D.
CO-01-02-0606-A

STATEMENT
OF
CHARGES

STEPHEN H. LEVINE, M.D., the Respondent, was authorized to practice medicine in New York state on October 5, 1979, by the issuance of license number 140020 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 13, 2000, the State of Florida, Board of Medicine (hereinafter, "Florida Board"), by a Final Order (hereinafter "Florida Order"), fined Respondent \$3,000.00, required him to maintain a contract with the Physicians Recovery Network, and required him to pay \$1,206.00 costs of investigation, based on having prescribed Stadol (butorphanol tortrate) for his wife on 33 separate occasions, not intended for his wife, that was intended for and personally used by him.

B. The conduct resulting in the Florida 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(2) (practicing the profession fraudulently);
2. New York Education Law §650(8) (being dependent on a habitual abuser of narcotics or other drugs having similar effects);
3. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine);
4. New York Education Law §6530(20) (moral unfitness); and/or
5. New York Education Law §6530 (32) (failing to maintain accurate records).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

DATED: *June 15*, 2001
Albany, New York


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