



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

November 6, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

E. Marta Sachey, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

James Edward Lewis, M.D.
1303 Grand Avenue
Washington, Indiana 47501

RECEIVED
NOV 06 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of James Edward Lewis, M.D.

Effective Date: 11/13/95

Dear Ms. Sachey and Dr. Lewis:

Enclosed please find the Determination and Order (No. 95-263) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

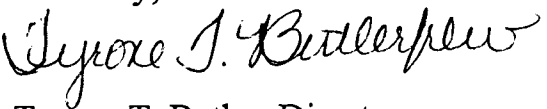
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive, flowing style.

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

JAMES EDWARD LEWIS, M.D.

DETERMINATION

AND

ORDER

BPMC 95-263

A Notice of Hearing and Statement of Charges, both dated August 31, 1995, were served upon the Respondent, **JAMES EDWARD LEWIS, M.D. LYON M. GREENBERG, M.D.**, Chairperson, **ARTHUR J. SEGAL, M.D.** and **CHARLOTTE S. BUCHANAN**, 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. **JEFFREY ARMON, ESQ**, Administrative Law Judge, served as Administrative Officer. A hearing was held on October 18, 1995. The Department of Health appeared by **JERRY JASINSKI, ESQ.**, Acting General Counsel, by **E. MARTA SACHEY, ESQ.**, Associate Counsel, of Counsel. The Respondent appeared pro se. Evidence was received, witnesses were 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

The 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 was charged with professional misconduct pursuant to Education Law Section 6530(9)(b). 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. James Edward Lewis, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on July 18, 1986 by the issuance of license number 167101 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. (Ex. 1)
2. The Medical Licensing Board of Indiana, by Order dated March 9, 1995, found that Respondent violated IC §25-1-9-4(a)(4)(d) which provides that a practitioner has continued to practice although the practitioner has become unfit to practice due to addiction to, abuse of, or severe dependency upon alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely. (Ex. 4)
3. The Indiana Board found, inter alia, that Respondent was addicted to alcohol, that Respondent would commonly drink alone at his office and that Respondent decided if he was too intoxicated to treat patients by whether he felt intoxicated or whether his wife thought his breath smelled of alcohol. The Board further found that Respondent, a pediatrician, hit and injured his three (3) minor children in August 1993 as a result of his alcohol addiction and that this was an aggravating circumstance which required further discipline against Respondent's medical license. (Ex. 4)

4. The Indiana Board suspended Respondent's license for two (2) years, stayed the suspension because of Respondent's excellent progress in recovery and placed Respondent on an indefinite term of probation. The probation requirements included monthly reports to the Board from Respondent's immediate supervising physician, Respondent's participation in a physician's assistance program, which program includes random urine drug and alcohol screening, and Respondent's continuation of psychological counseling. (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 Committee concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Indiana Medical Licensing Board took disciplinary action against Respondent's license to practice medicine in that State. The Conduct underlying the Indiana Board's imposition of discipline, would have, if committed in New York State, constituted professional misconduct under New York Education Law Section 6530(8) [being a habitual abuser of alcohol], and/or 6530(7) [practicing while impaired by alcohol]. Therefore, the Hearing Committee voted to sustain the 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, unanimously determined that Respondent's license to practice medicine in New York State should be suspended for a ten (10) year period, said suspension to be stayed, and that Respondent be placed on probation in accordance with the Terms of Probation as set forth in Appendix II during said ten (10) year period of suspension. The period of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in writing, that Respondent has commenced a medical practice in New York

State. 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 testified as to his extensive efforts toward recovery from his alcohol addiction, which includes frequent attendance at Alcoholics Anonymous and Caduceus meetings. He stated that he has remained sober for two (2) years and currently maintains a general office and clinic practice as well as a weekly free medical clinic. Respondent indicated a desire to return to upstate New York, where he was born, and expressed an interest in commencing a practice in emergency medicine. He also stated that he believed that it would be appropriate for him to submit to continued monitoring of his recovery as a condition of his practicing in New York State. The Department noted Respondent's progress in recovery and indicated that a stayed suspension of his New York license and his placement on probation for an extended period would be viewed as an appropriate penalty in this case. The Hearing Committee agreed and concluded that a requirement that Respondent obtain a practice monitor, in addition to a sobriety monitor, would not be necessary because there was no indication in the record that the action taken by the Indiana Board was related to a quality of care issue.

ORDER

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

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED**.
2. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of ten (10) years from the effective date of this Order, said suspension to be **STAYED**.
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.
4. The periods of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is notified, in accordance with the Terms of Probation, that Respondent has commenced a medical practice in New York State.

DATED: Albany, New York
November 1st, 1995


LYON M. GREENBERG, M.D.
(Chair)

ARTHUR J. SEGAL, M.D.
CHARLOTTE S. BUCHANAN

TO: E. Marta Sachey, Esq.
Associate Counsel
New York State Dept. of Health
Corning Tower- Room 2438
Empire State Plaza
Albany, New York 12237

James Edward Lewis, M.D.
1303 Grand Avenue
Washington, Indiana 47501

APPENDIX I



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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
JAMES EDWARD LEWIS, M.D. : PROCEEDING

-----X

TO: James Edward Lewis, M.D.
1303 Grand Avenue
Washington, Indiana 47501

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. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). 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 October, 1995 at 10:00 a.m. in the forenoon of that day at Empire State Plaza, State Cultural Education Building, Meeting Room E, Concourse Level, Albany, New York 12237.

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 4, 1995.

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 4, 1995 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
August 31, 1995

Peter D. Van Buren

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

Inquiries should be addressed to:

E. Marta Sachey
Associate 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

-----X

IN THE MATTER : STATEMENT
OF : OF
JAMES EDWARD LEWIS, M.D. : CHARGES

-----X

JAMES EDWARD LEWIS, M.D., the Respondent, was authorized to practice medicine in New York State on July 18, 1986 by the issuance of license number 167101 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in New York State.

FACTUAL ALLEGATIONS

1. The Medical Licensing Board of Indiana, by Order dated March 9, 1995, found that Respondent violated IC §25-1-9-4(a)(4)(d) which provides that a practitioner has continued to practice although the practitioner has become unfit to practice due to addiction to, abuse of, or severe dependency upon alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely.

2. More specifically, the Indiana Board found, inter alia, that Respondent was addicted to alcohol, that Respondent would commonly drink alone at his office and that

Respondent decided if he was too intoxicated to treat patients by whether he felt intoxicated or whether his wife thought his breath smelled of alcohol. The Board further found that Respondent, a pediatrician, hit and injured his three minor children in August 1993 as a result of his alcohol addiction and that this was an aggravating circumstance which required further discipline against Respondent's medical license.

3. The Indiana Board suspended Respondent's license for two years. It, inter alia, stayed the suspension because of Respondent's excellent progress in recovery and placed Respondent on an indefinite term of probation. The probation requirements include monthly reports to the Board from Respondent's immediate supervising physician, Respondent's participation in a physician's assistance program, which program includes random urine drug and alcohol screening, and Respondent's continuation of psychological counseling.
4. The conduct underlying the Indiana Board's finding of unprofessional misconduct would, if committed in New York State, constitute professional misconduct under N.Y.Educ.Law §6530(8) [being a habitual user of alcohol] and/or §6530(7) [practicing while impaired by alcohol] (McKinney Supp. 1995).

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(b) by reason of 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 the facts in Paragraphs 1 through 4.

DATED: *August 31*, 1995
Albany, New York

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

APPENDIX II

TERMS AND CONDITIONS OF PROBATION

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent's probation shall be supervised by the Office of Professional Medical Conduct.
4. Respondent shall submit prompt written notification to the Board, addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses (residence or professional), telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.
5. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action. Respondent shall authorize the release of any written materials or reports prepared pursuant to such investigations, charges, convictions or disciplinary actions, as requested by the OPMC. Any failure to so authorize the release of such written materials or reports may be deemed by the OPMC to be a violation of these terms of probation.
6. Respondent shall submit written notification that he intends to begin a medical practice in New York State to the Director of OPMC at least thirty (30) days prior to the actual commencement of such a medical practice. In conjunction with such notification, Respondent shall also submit written proof that he has paid all registration fees due and is currently registered with the New York State Department of Education to practice medicine as a physician.
7. Respondent shall comply with all terms and conditions governing his practice of medicine in any other jurisdiction outside New York State.
8. Respondent shall remain drug and alcohol free.
9. Respondent shall be monitored by a qualified health care professional for a three (3) year period beginning with his commencement of a medical practice in New York State. Respondent shall submit the name and signed acknowledgement of such a professional for approval to the OPMC and shall not practice medicine in New York State until approval of the proposed monitor is given by the OPMC. Any practice of medicine prior to the submission and approval of the proposed monitor shall be determined to be a violation of the terms of probation.
 - a. Respondent shall submit the name of a successor qualified monitoring health care professional to the Office of Professional Medical Conduct for approval within seven (7) days of Petitioner's becoming aware that the original monitoring health care professional will no longer serve in that capacity.
 - b. The monitoring health care professional shall monitor Respondent's compliance

with the terms of probation imposed herein and shall cause to be performed, at least quarterly, unannounced blood and/or urine tests for the presence of alcohol or drugs in Respondent.

- c. The monitoring health care professional shall immediately notify the Office of Professional Medical Conduct if Respondent refuses such a test.
 - d. If such a test reveals, or the monitoring health care professional otherwise learns that Respondent is not drug and alcohol free, the monitoring health care professional shall immediately notify the Office of Professional Medical Conduct.
 - e. The monitoring health care professional shall see Respondent at least twice every three months. Every three (3) months, the monitoring health care professional shall submit to the Office of Professional Medical Conduct a report certifying compliance with each of the terms of probation by Respondent or describing in detail any failure to comply. The report shall include the results of all tests for the presence of drugs or alcohol performed during that three (3) month period.
10. Respondent shall remain subject to the performance of unannounced blood and/or urine tests for the presence of alcohol or drugs as determined to be appropriate by the Director of the OPMC for the remaining seven (7) year period of his probation. Any refusal to submit to the performance of such test may be considered to be a violation of the terms of probation.
 11. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.
 12. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §340(19) or any other applicable laws.