



# 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*

May 21, 1996

Karen Schimke  
*Executive Deputy Commissioner*

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Kimberly A. O'Brien, Esq.  
Senior Attorney  
NYS Dept. of Health  
Corning Tower-Room 2438  
Albany, New York 12237

Mae A. D'Agostino, Esq.  
Maynard, O'Connor, Smith,  
Catalinotto & D'Agostino  
80 State Street  
Albany, New York 12207

Leonard Edelman, M.D.  
228 Plaza Drive  
Lehigh Acres, Florida 33936-6018

RE: In the Matter of Leonard Edelman, M.D.

Effective Date: 05/28/96

Dear Ms. O'Brien, Ms. D'Agostino and Dr. Edelman:

Enclosed please find the Determination and Order (No. 96-126) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

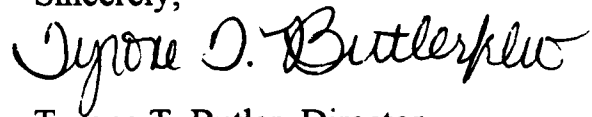
The notice of review served on the Administrative Review Board should be forwarded to:

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 cursive script, reading "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:rlw  
Enclosure

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

**COPY**

**IN THE MATTER**  
**-OF-**  
**LEONARD EDELMAN, M.D.**

**Respondent**

DETERMINATION

AND

ORDER

BPMC-96-126

A Notice of Referral Proceeding and Statement of Charges, both dated February 20, 1996, were served upon the Respondent, Leonard Edelman, M.D. **WILLIAM P. DILLON, M.D. (Chair), JOSEPH G. CHANATRY, M.D. and D. MARISA FINN** 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 W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Kimberly A. O'Brien, Esq., Senior Attorney. The Respondent appeared by Maynard, O'Connor, Smith, Catalinotto & D'Agostino, Mae A. D'Agostino of Counsel. Evidence was received, statements were 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). This statute provides for an expedited proceeding 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 prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding 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) (disciplinary action taken against the license by another state). The charges herein arise from Respondent entering into a Consent Agreement with the State of Florida based on an Administrative Complaint. The Complaint alleged the Respondent failed to wean a patient off Dopamine and failed to administer high concentration oxygen although the patient exhibited symptoms of ischemia. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix One.

## **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 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. Leonard Edelman, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on April 4, 1980, by the issuance of license

number 141635 by the New York State Education Department. (Pet. Exs. #1&2).

2. On or about December 16, 1994, the State of Florida Board of Medicine adopted the Consent Agreement executed by the Respondent and the State of Florida. (Pet. Ex. #3)

3. The Respondent was charged by the State of Florida Board of Medicine with committing acts which constituted gross or repeated malpractice or failing 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; administering a legend drug other than in the course of a physician's practice and failing to keep medical records justifying the course of patient treatment. (Pet. Ex. #3)

4. The State of Florida Board of Medicine issued a Letter of Concern, fined the Respondent Two Thousand Dollars (\$2,000.00) and imposed certain continuing medical education conditions which the Respondent had to meet within one year. (Pet. Ex. # 3)

5. The Respondent has fulfilled the conditions imposed upon him by the State of Florida Board of Medicine. (Res. Ex. # A)

### **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 had disciplinary action taken or had his application for a license refused by a professional disciplinary agency of another state. The underlying conduct which was the basis for the action by Florida would constitute professional misconduct in New York. Specifically, the Hearing Committee found the Respondent's actions would fall within the definitions of misconduct set forth at §6530(3) (Practicing the profession with negligence on more than one occasion) and N.Y. Education Law §6530(16) (Willful or grossly negligent failure to follow state law governing the the practice of medicine).

#### **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 should be **Censured and Reprimanded**. Furthermore the Respondent is placed on a one (1) year period of **Probation** under the terms and conditions set forth in Appendix II, attached hereto and made a part of this Order. 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 Hearing Committee based its determination on the fact that the conduct upon which the Florida action was based involved only one incident and the Respondent has

exhibited a recognition of his mistake by the full compliance of the conditions imposed by Florida. Therefore the Hearing Committee did not feel that revocation or suspension was warranted. It is the Hearing Committee's duty to protect the consumers of medical services of this state. The committee believes the imposition of a one (1) year probation with monitoring provisions relating to the Respondent's practice will fulfill that duty.

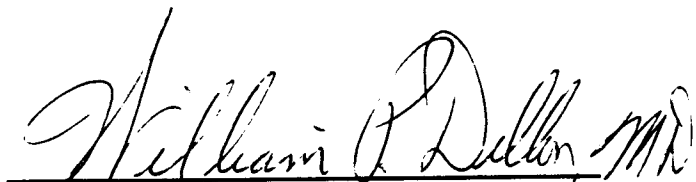
### **ORDER**

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

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State is hereby **CENSURED AND REPRIMANDED**.
3. Respondent is hereby placed on **PROBATION** for a period of one (1) year pursuant to the terms set forth in Appendix II.

**DATED: Buffalo, New York**

*May 18th, 1996*



**WILLIAM P. DILLON, M.D. (CHAIR)**

Joseph G. Chanatry, M.D.

D. Marisa Finn



TO: **KIMBERLY A. O'BRIEN, ESQ.**

Senior Attorney  
Bureau of Professional Medical Conduct  
New York State Department of Health  
Corning Tower Building  
Empire State Plaza  
Albany, N.Y. 12237

**MAE A. D'AGOSTINO, ESQ.**

Maynard, O'Connor, Smith, Catalinotto & D'Agostino  
80 State Street  
Albany, New York 12207

Leonard Edelman, M.D.  
228 Plaza Drive  
Lehigh Acres, Florida 33936-6018

## APPENDIX ONE

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

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IN THE MATTER	:	STATEMENT
OF		OF
LEONARD EDELMAN, M.D.	:	CHARGES

-----X

LEONARD EDELMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 4, 1980, by the issuance of license number 141635 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A 1. The Board of Medical Examiners of the State of Florida, [hereinafter "the Florida Board"], by Final Consent Order on or about December 16, 1994, approved and adopted in toto a Consent Agreement in which Respondent admitted that the facts set forth in the Administrative Complaint, if proven would constitute violations of Chapter 458, Florida Statutes. The Administrative Complaint alleged, among other things, that Respondent failed to wean a patient off Dopamine despite recurring symptoms of ischemia.
2. The Florida Board ordered that Respondent pay a \$2,000 fine, issued a letter of concern and mandated Continuing Medical Education.

3. The conduct underlying the Florida Board's finding of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(16) (McKinney Supp.1996) [failure to comply with substantial provisions of state laws governing the practice of the profession], and or N.Y. Educ. Law §6530(3) (McKinney Supp.1996) [practicing the profession with negligence on more than one occasion]

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**DISCIPLINE IN ANOTHER STATE**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) by reason of his having been disciplined by a duly authorized professional disciplinary agency of another state where the conduct, upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in Paragraphs A.1, A.2, and/or A.3.

DATED: *February 20*, 1996  
Albany, New York



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

## **APPENDIX II**

### TERMS AND CONDITIONS OF PROBATION

The Respondent's license to practice medicine in New York is placed on probation for a period of one (1) year. This probationary period will not take effect until the Respondent informs the New York State Department of Health, Office of Professional Conduct (hereinafter OPMC) by certified mail that he intends to practice medicine in New York and is permanently residing in New York. Upon commencement of the probationary period the following conditions shall be in effect:

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 shall submit prompt (within 20 days) written notification to the Board, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York State shall toll the probationary period, which shall be extended by the length of residency or practice outside New York State.
5. During the period of probation, the Director of the Office of Professional Medical Conduct or designee, may review the professional performance of the Respondent. This review may include but not be limited to a random selection of the office records, patient records or hospital charts, interviews with or periodic visits with the Respondent and his/her staff at the practice location(s) or one of the offices of the Office of status, Building, Room 438, Albany, New York 12237, regarding any change in employment,

6. 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.
7. Respondent's practice of medicine shall be monitored by a physician monitor, board certified in an appropriate specialty, ("Practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct or designee. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of a proposed practice monitor will be determined to be a violation of probation.
  - a. The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or designee, on a schedule to be determined by the office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis at least quarterly and shall examine a random (no less than 15) selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall immediately be reported to the Office of Professional Medical Conduct by the monitor.
  - b. Any change in practice monitor must be approved in writing, in advance, by the Office of Professional Medical Conduct.
  - c. All expenses associated with monitoring, including fees to the monitoring physician, shall be the sole responsibility of the Respondent.
  - d. It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.
  - e. Respondent must maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director or designee prior to the placement of a practice monitor.