



# 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.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

March 14, 2000

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.  
NYS Department of Health  
433 River Street-4<sup>th</sup> Floor  
Troy, New York 12180

Edward R. Janowitz, M.D.  
530 D Grant Street  
New York, New York 10002

Edward R. Janowitz, M.D.  
372 Fifth Avenue  
New York, New York 10018

Edward R. Janowitz, M.D.  
373 Fifth Avenue  
New York, New York 10018

Michael G. Berger, Esq.  
Jared M. Lefkowitz, Esq.  
250 Park Avenue  
20<sup>th</sup> Floor  
New York, New York 10177

### **RE: In the Matter Edward R. Janowitz, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-79) 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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

IN THE MATTER

OF

EDWARD R. JANOWITZ M.D.

DECISION  
AND  
ORDER  
OF THE  
HEARING  
COMMITTEE

ORDER NO.  
BPMC 00 -79

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated November 12, 1999 which were served upon EDWARD R. JANOWITZ M.D., (hereinafter referred to as "Respondent").

GEORGE C. SIMMONS, Ed.D., Chairperson, FILIPPO DICARMINE, M.D., JAMES EISENKRAFT, 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.

JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as the Administrative Officer.

A hearing was held on December 14, 1999 at 5 Penn Plaza, New York, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner" or "the Board") appeared by HENRY M. GREENBERG, ESQ., General Counsel, by ROBERT BOGAN, ESQ., Assistant Counsel, Bureau of Professional Medical Conduct. Respondent appeared in person and by MICHAEL G. BERGER, ESQ., and JARED M. LEFKOWITZ, ESQ.. Sworn testimony was heard and Evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

## STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530 (9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9) (a) (i) (having been convicted of an act constituting a crime). The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

## FINDINGS OF FACT

The Committee adopts the factual statements set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

## CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS SPECIFICATIONS AND PENALTY

Petitioner has proven by a preponderance of the evidence that Respondent was found guilty of a willful violation of the Public Health Law. Respondent plead guilty to prescribing a controlled

substance to someone he had never treated. This offense constitutes a misdemeanor. Respondent was sentenced to a conditional discharge. These facts constitute professional misconduct as set forth in Section 6530 (9)(a)(i). Under Section 6530 (9)(a)(i), the conviction of a crime constitutes professional misconduct. Therefore, the facts and specifications set forth in the Statement of Charges (Appendix A) are sustained.

The Committee now turns its attention to what penalty to impose. Respondent testified in this proceeding. He was cross-examined and questioned by the Committee. The facts established are these: An undercover agent, posing as a patient, requested a prescription for a controlled substance for a person he identified as "his girlfriend," Respondent had never met, examined or treated the person identified as the "girlfriend." Respondent provided the prescription. The agent made the same request a second time and the request was granted. It is noteworthy that when the agent requested a prescription for yet another person, Respondent refused. Respondent was paid thirty dollars for the prescription. Thirty dollars was the price of a regular visit. The agent insisted that Respondent accept payment and Respondent did not refuse it. The drug prescribed, Alprazolam<sup>1</sup>, was safe and efficacious for the symptoms described by the agent.

Respondent showed great remorse for his acts. He was clearly fooled by a false appeal for patient convenience or a perverted desire to provide an accommodation. Whatever his motivation, the acts of Respondent were inappropriate and wrong. By issuing not just one, but two prescriptions for a patient he had never seen, Respondent displayed an unacceptable level of sub-standard judgment. One of the reasons certain medications are called "controlled substances" is that they are subject to abuse. That is why only licensed members of the medical arts are permitted to prescribe and dispense them. Respondent had a duty to be vigilant against being led into a fraudulent situation. He failed in this duty.

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<sup>1</sup> The Statement of Charges in this proceeding cites the drug "Alprayan." As no such drug exists, it would appear that the substance involved was alprazolam, a benzodiazepine. This appears to be a simple clerical error and posed no prejudice to Respondent.

In mitigation, the Committee notes that Respondent refused to prescribe to an additional prescription for another unexamined party. Furthermore, the amount of money exchanged is not consistent with a street criminal or common purveyor. Respondent demonstrated that he has learned from this significant error. He appears to be a changed person as a result of his criminal trial and the associated situation which developed. The Committee was unanimous in its conclusion that Respondent appears to be rehabilitated and very unlikely to commit further offenses.

The balance between demonstrating that illegal drug trafficking will not be tolerated and falling short of destroying what otherwise appears to be an unblemished career is always a difficult one. In this case the Committee is satisfied that this physician is appropriately chastened and poses a very unlikely threat to the public. He should be allowed to continue to practice. However, his sub-standard judgment cannot be entirely forgiven. Some might suggest monitoring of all controlled substance prescriptions issued by this practitioner. However, given the nature of Respondent's practice, that would effectively end his practice. Furthermore, this appears to be a one time lapse from otherwise acceptable practice and judgement. In consideration of the difficult balance but with optimism supported by the presentation of Respondent himself, it is the unanimous conclusion that Respondent shall stand in receipt of a Censure and Reprimand.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby ORDERED that:

1. The Factual allegations in the Statement of Charges (Appendix One) are SUSTAINED;  
Furthermore, it is hereby ORDERED that;
2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are SUSTAINED;  
Furthermore, it is hereby ORDERED that;
3. Respondent be subject to CENSURE AND REPRIMAND;  
Furthermore, it is hereby ORDERED that;
4. This order shall take effect UPON RECEIPT by Respondent or <sup>his</sup> ~~her~~ attorney or SEVEN (7) DAYS after mailing of this order by Certified Mail to Respondent or ~~her~~ <sup>his</sup> attorney.

Dated:

Rochester, New York

**MARCH 1, 2000** *β*

~~December~~ \_\_\_\_\_ 1999

*George C. Simmons*

—  
GEORGE C. SIMMONS, Ed.D.,  
Chairperson  
FILIPPO DICARMINE, M.D.  
JAMES EISENKRAFT, M.D.

TO:

**ROBERT BOGAN ESQ.**

Assistant Counsel

Bureau of Professional Medical Conduct

Corning Tower

Albany, N.Y. 12237

**MICHAEL G. BERGER, ESQ.**

**JARED M. LEFKOWITZ, ESQ.**

250 Park Ave. 20 Floor

New York, NY 10177

**EDWARD R. JANOWITZ, M.D.**

530 D Grand St.

New York, NY 10002

**EDWARD R. JANOWITZ, M.D.**

372 Fifth Ave.

New York, NY 10018

**EDWARD R. JANOWITZ, M.D.**

373 Fifth Ave.

New York, NY 10018



**APPENDIX ONE**



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

**IN THE MATTER  
OF  
EDWARD R. JANOWITZ, M.D.**

**NOTICE  
OF  
REFERRAL  
PROCEEDING**

**TO: EDWARD R. JANOWITZ, M.D.  
530-D Grand Street  
New York, NY 10002**

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 15th day of December, 1999 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 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, 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 December 6, 1999.

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 or 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 December 6, 1999 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  
*November 12*, 1999



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

Inquiries should be addressed to:

Robert Bogan  
Assistant Counsel  
Office of Professional Medical Conduct  
433 River Street  
Suite 303  
Troy, NY 12180  
(518)402-0820

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

**IN THE MATTER  
OF  
EDWARD R. JANOWITZ, M.D.**

**STATEMENT  
OF  
CHARGES**

EDWARD R. JANOWITZ, M.D., the Respondent, was authorized to practice medicine in New York State on June 8, 1962 by the issuance of license number 087406 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about June 9, 1999, in the Criminal Court of the City of New York, Respondent entered a plea of guilty and was found guilty of a willful violation of Public Health Law §12B, in that he violated Public Health Law §3304, and Regulations of the Health Department §80.62, and was sentenced to a conditional discharge, in that he prescribed a controlled substance, Alpraxalan, to a patient he had never treated.

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(i) by reason of being convicted of an act constituting a crime under New York State law, in that the Petitioner charges:



1. The facts in paragraph A.

DATED: *Nov 12*, 1999  
Albany, New York

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