



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

March 24, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bret Lusskin, M.D.
1920 East Hallandale Beach Blvd.
Suite 502
Hallandale, Florida 33509

Jonathan M. Frost, Esq.
Ainsworth & Sullivan
403 New Karner Road
Albany, New York 12212

Kevin P. Donovan, Esq.
Assistant Counsel
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2429
Albany, NY 12237

RE: In the Matter of Bret Lusskin, M.D.

Dear Dr. Lusskin, Mr. Frost and Mr. Donovan:

Enclosed please find the Determination and Order (No. 93-42) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 than 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 (p), 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.

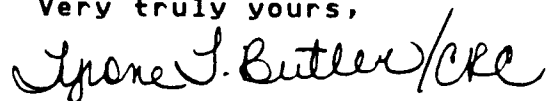
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower - Room 2503
Empire State Plaza
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.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler" followed by a stylized flourish or initials.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF :
BRET LUSSKIN, M.D. : AND
: ORDER
-----X

ORDER NO. BPMC-93-42

A Notice of Hearing and Statement of Charges, both dated September 11, 1992, were served upon the Respondent, Bret Lusskin, M.D. REV. EDWARD J. HAYES (Chair), ARTHUR H. DUBE, M.D., and GERALD J. HAUSLER, D.O., 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, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. A hearing was held on November 18, 1992. The Department of Health appeared by Kevin P. Donovan, Esq., Assistant Counsel. The Respondent appeared by Ainsworth, Sullivan, Jonathan M. Frost, Esq., of Counsel. 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

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 is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and Section 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. Bret Lusskin, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on November 6, 1961 by the issuance of license number 086957 by the New York State Education Department. Respondent was registered with the New York State Education Department to practice medicine in New York State

for the period January 1, 1991 through December 31, 1992. (Pet. Ex. #2).

2. By a Final Order, dated December 19, 1991, the Board of Medicine of the Department of Professional Regulation of the State of Florida (hereinafter "Florida Board") took disciplinary action against Respondent. The Board concluded inter alia, that:

(a) Respondent failed to keep written medical records justifying the course of treatment of Patient N.L., including, but not limited to, patient histories, examination results, and test results;

(b) Respondent inappropriately prescribed Valium (a controlled substance) to a patient by not obtaining a history, physical examination, or update since her last visit;

(c) Respondent failed to practice medicine with the level of care, skill and treatment which is required by a reasonably prudent similar physician under similar conditions and circumstances when he prescribed Valium to N.L. without first obtaining an appropriate patient history, update, examination, or providing any medical records indicating the need for such medication;

(d) While in an examining room with Patient C.F., the patient walked over to Respondent, abruptly opened his belt, opened his pants, pulled his pants down, pulled down his underwear, pulled up his shirt, and told Respondent to "hold this", referring to his penis. The Florida Board further concluded that such conduct was

inappropriate, unethical and below the standard of care. (Pet. Ex. #3).

3. Based upon the conclusions cited in Paragraph #2, above, the Florida Board reprimanded Respondent. The Board further ordered the following additional requirements:

(a) Within sixty days, Respondent must be evaluated by a psychiatrist approved by the Physician's Recovery Network and must comply with all recommendations of said psychiatrist including entering into and complying with a contract with the Physician's Recovery Network, if applicable;

(b) Respondent shall not examine or treat any female patients without a female employee who is a health care professional licensed by the Department of Professional Regulation present in the room;

(c) Respondent must complete a continuing medical education course offered by the University of South Florida and the Florida Medical Association entitled, "Protecting Your Medical Practice: Clinical, Legal, and Ethical Issues in Prescribing Abusable Drugs", or an equivalent course approved by the Board.

(Pet. Ex. #3).

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 the Department has sustained its burden of proof with respect to the Factual

Allegations set forth in the Statement of Charges. Paragraphs 1 through 3 of the Factual Allegations are sustained in full. Paragraph 4 is sustained, with the exception of the phrase "...and held his exposed penis", which is not sustained.

The Hearing Committee further concluded, by a preponderance of the evidence, that the First and Second Specifications of professional misconduct should be sustained. The record clearly established the fact the Respondent was disciplined by the Florida Board on December 19, 1991, following an adjudicatory hearing.

The Florida Board found that Respondent had failed to keep written medical records justifying the course of treatment of a patient. Further, Respondent inappropriately prescribed Valium to a patient without first obtaining an appropriate patient history, update, examination or providing any medical records indicating the need for such medication. The Florida Board also found that while in an examining room with Patient C.F., the patient walked over to Respondent, opened his belt, opened his pants, pulled his pants down, pulled down his underwear, pulled up his shirt, and told Respondent to "hold this", referring to his penis. The Florida Board found that such behavior constituted sexual misconduct in the practice of medicine.

The Hearing Committee concluded that Respondent's conduct would have constituted misconduct under Education Law Section 6530, if committed in New York State. More specifically, Respondent's actions would constitute negligence on more than one occasion, in

violation of Education Law Section 6530(3) and conduct which evidences moral unfitness to practice medicine, in violation of Education Law Section 6530(20). As a result, the Hearing Committee unanimously voted to sustain the First and Second Specifications of professional misconduct, as set forth 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 for a period of five years from the effective date of this Determination and Order. In addition, Respondent should be required to fulfill the requirements set forth by the Florida Board, as enumerated in Paragraphs #3, above. 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 conduct of Respondent, as found by the Florida Board in its proceedings, represents a serious breach of the public trust, and placed a patient at risk through the indiscriminate prescription of controlled substances. The Hearing Committee was troubled by the incongruity between the findings of the Florida Board and the sanction (reprimand) which it imposed based upon those findings.

This Hearing Committee has an independent responsibility to determine the appropriate sanction to impose upon Respondent's New York medical license, based upon the Florida Board's findings. There is insufficient evidence in the record to justify a revocation of Respondent's New York license. Nevertheless, Respondent's conduct warrants a significant sanction. Under the totality of the circumstances, the Hearing Committee determined that a five year suspension of Respondent's license to practice medicine in New York State is the appropriate sanction. In addition, Respondent should be required to fulfill the conditions set forth by the Florida Board in its Final Order, and enumerated in Finding of Fact #3, above.

ORDER

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

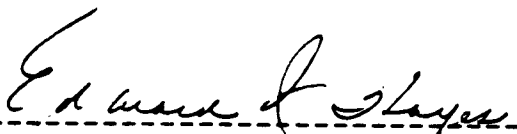
1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED**;
2. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of **FIVE YEARS** from the effective date of this Determination and Order;
3. Within sixty days, Respondent must be evaluated by a psychiatrist approved by the Physician's Recovery Network and must comply with all recommendations of said psychiatrist including entering into and complying with a contract with the Physician's Recovery Network, if applicable;

4. Upon completion of the period of suspension, Respondent shall not examine or treat any female patients without a female employee who is a licensed health care professional present in the room;

5. Respondent must complete a continuing medical education course offered by the University of South Florida and the Florida Medical Association entitled, "Protecting Your Medical Practice: Clinical, Legal, and Ethical Issues in Prescribing Abusable Drugs", or an equivalent course approved by the Office of Professional Medical Conduct.

DATED: Albany, New York

March 19. , 1993



REV. EDWARD J. HAYES (Chair)

ARTHUR H. DUBE, M.D.
GERALD J. HAUSLER, D.O.

TO: Kevin P. Donovan, Esq.
Assistant Counsel
New York State Department of Health
Room 2429 - Corning Tower Building
Empire State Plaza
Albany, New York 12237

Jonathan M. Frost, Esq.
Ainsworth, Sullivan
403 New Karner Road
Albany, New York 12212

Bret Lusskin, M.D.
1920 East Hallandale Beach Boulevard, Suite 502
Hallandale, Florida 33509

APPENDIX I



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

-----X
IN THE MATTER :
OF :
BRET LUSSKIN, M.D. :
NOTICE OF
REFERRAL
PROCEEDING
-----X

TO: BRET LUSSKIN, M.D.
1920 East Hallandale Beach Boulevard
Suite 502
Hallandale, Florida 33509

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. 1992) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 21st day of October, 1992 at 10:00 o'clock in the forenoon of that day at the New York State Department of Health, Corning Tower, Room 2509, Empire State Plaza, 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 Larry Storch, Administrative Law Judge, New York State Department of Health, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, as well as the Department of Health attorney indicated below, on or before October 12, 1992 .

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with Judge Storch at the address indicated above on or before October 12, 1992 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 Judge Storch 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 11, 1992

Peter D. Van Buren

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

Inquiries should be addressed to:

Kevin P. Donovan
Assistant Counsel
NYS Dept. of Health
Bureau of Professional
Medical Conduct
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
BRET LUSSKIN, M.D. : CHARGES
-----X

BRET LUSSKIN, M.D., the Respondent, was authorized to practice medicine in New York State on November 6, 1961, by the issuance of license number 086957 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine in New York State for the period January 1, 1991, to December 31, 1992. Respondent's registered address with the New York State Education Department is 192C East Hallandale Beach Boulevard, Suite 502, Hallandale, Florida 33509.

FACTUAL ALLEGATIONS

A. By Final Order dated December 19, 1991, the Board of Medicine of the Department of Professional Regulation of the State of Florida concluded that:

1) The Respondent failed to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, and test results;

2) The Respondent inappropriately prescribed Valium (a controlled substance) to a patient by not obtaining a history, physical examination, or update since her last visit;

3) The Respondent failed to practice medicine with the level of care, skill and treatment which is required by a reasonably prudent similar physician under similar conditions and circumstances when he prescribed Valium to a patient without first obtaining an appropriate patient history, update, examination, or providing any medical records indicating the need for such medication; and

4) The Respondent committed behavior that was inappropriate, unethical, and below the standard of care when he had his pants down and held his exposed penis while in an examining room with a female patient.

FIRST SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law §6530(9)(b) (McKinney Supp. 1992) in that he has 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:

1. The facts of Paragraphs A and A.1, A and A.2, A and A.3 and/or A and A.4.

SECOND SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law §6530(9)(d) (McKinney Supp. 1992) in that disciplinary action was taken against Respondent after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the 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:

2. The facts of Paragraphs A and A.1, A and A.2, A and A.3 and/or A and A.4.

DATED: Albany, New York

September 11, 1992



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