



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

PUBLIC

Dennis P. Whalen
Executive Deputy Commissioner

June 14, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Bonnie M. Wier, Esq.
Kern, Augustine, Conroy
& Schoppmann, P.C.
1120 Route 22 East
Bridgewater, New Jersey 08807

Johnny Rick Larsen, D.O.
4 Breckenridge Drive
Shamong, New Jersey 08088

Johnny Rick Larsen, D.O.
Kimball Medical Center
600 River Avenue
Lakewood, New Jersey 08701

RE: In the Matter of Johnny Rick Larsen, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-196) 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:cah
Enclosure

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

IN THE MATTER
OF
JOHNNY RICK LARSEN, D.O.

DETERMINATION
AND
ORDER
BPMC #02-196

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated March 28, 2002, were served upon the Respondent, **JOHNNY RICK LARSEN, D.O.**. **FRED LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **MR. JOHN D. TORRANT**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on May 23, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department 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 by **BONNIE M. WEIR, ESQ.**

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 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, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (2), (3), (16), (20), (24) and (32). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Joanne Carrocino, FACHE (by phone) –
Executive Director, Kimball Medical
Center, Lakewood, NJ
John C. Bertolini, M.D., F.A.C.E.P. (by
phone) – Chairman and Medical
Director, Department of Emergency
Medicine, Union Hospital, Union, NJ

Louis Baxter, M.D. (by phone) – Executive
Medical Director, Medical Society of
NJ, Physicians' Health Program
Respondent

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 unless otherwise specified.

1. **JOHNNY RICK LARSEN, D.O.**, the Respondent, was authorized to practice medicine in New York State on January 18, 1990, by the issuance of license number 181265 by the New York State Education Department (Ex. 4).
2. On December 14, 2001, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (hereinafter "New Jersey Board"), by a Final Order (hereinafter "New Jersey Order"), suspended Respondent's license for two (2) years, stayed the suspension to be served as probation, required him to continue to participate with the Physicians Health Program (PHP), and ordered him to pay not more than \$6,000.00 costs, based upon findings that

he engaged in indiscriminate prescribing of controlled dangerous substances and procured them through improper methods in order to maintain his addiction thereto.

SIGNIFICANT LEGAL RULING

Respondent contended that the Administrative Law Judge should dismiss this case on the ground that the Americans with Disabilities Act (A.D.A.) prevents the Department from taking action against Respondent for his past drug abuse, because of his current rehabilitation (this argument is developed in detail in Administrative Law Judge's Ex. 1, which was not viewed by the Hearing Committee). This motion was denied by the Administrative Law Judge on the ground that Respondent is not being discriminated against because of his past drug use, as contended by Respondent. Rather, Respondent is being subjected to discipline by New York State because (as is found, below) was he found guilty of misconduct and was subjected to discipline in another state.

The specific behavior which led to the New Jersey Order included not only his drug use but his use of illegal means to obtain dangerous drugs, his indiscriminate prescribing to his then girlfriend and his failure to maintain proper records. The A.D.A. certainly cannot be construed to prohibit New York State from taking action to ensure that its residents are protected against recurrences of such conduct.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the New Jersey Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(2) (practicing the profession fraudulently);
- New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulation governing the practice of medicine);
- New York Education Law §6530(24) (practicing beyond the scope permitted by law);
- New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient);

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by 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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken, where the conduct resulting in the 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 on December 14, 2001, New Jersey Board, by issuance of the New Jersey Order, suspended Respondent's license for two years, stayed the suspension to be served as probation, required him to continue to participate with the Physicians Health Program (PHP), and ordered him to pay not more than \$6,000.00 costs, based upon findings that he engaged in indiscriminate prescribing of controlled dangerous substances and procured them through improper methods in order to maintain his addiction thereto.

The Hearing Committee concludes that the conduct described in this order would not have constituted misconduct in New York State under New York Education Law §6530(3) because the New Jersey Order does not contain a finding of, or evidence of, negligence. The Hearing Committee further concludes that the New Jersey Order does not make a finding of, or indicate that there was evidence of, conduct which evidence moral unfitness to practice medicine (New York Education Law §6530 (20)). However, the conduct described in the Order would have constituted misconduct under the remainder of the definitions of misconduct cited above, and since the New Jersey Board found Respondent guilty of misconduct and meted out disciplinary action, Respondent is guilty of New York misconduct under Education Law §6530(9)(b) and (d).

The only issue remaining to be addressed is the penalty to be assessed for this misconduct. The Hearing Committee determines, for reasons to be set forth below, that the appropriate penalty is a 3-year period of probation.

The acts covered by the New Jersey Order occurred from 1994 through 1997. Respondent testified credibly that he has been drug-free since December of 1997. In approximately April, 1998, Respondent's drug abuse and prescribing practices came to light, and in early May, 1998, a case was initiated for him with the New Jersey Physicians' Health Program. In mid-May, Respondent commenced an inpatient clinical evaluation at the Hampton Counseling Center, followed by a 3-month outpatient program (Ex. B; Respondent's testimony and testimony of Louis Baxter, M.D.).

Dr. Baxter testified that after Respondent's outpatient program, he was cleared to return to work and was not considered impaired or at risk. As part of his program with PHP, Respondent has been subjected to random drug testing, and the results have been consistently negative. Dr. Baxter testified that Respondent's recovery efforts thus far have been successful, that Respondent is very diligent in complying with his program and that there is no reason to suspect that Respondent is impaired for the practice of medicine.

In addition, Respondent presented glowing testimony from high-ranking officials at two of the hospitals where he is currently employed as an emergency room physician (and written statements from two others) as to his performance since he began work at these facilities in mid-1999 (testimony of Dr. Kimball and Dr. Bertolini; Ex.'s A, D and J). Respondent also presented documentation that he successfully completed a Voluntary Recovery Program and been restored to the unmonitored practice of medicine in Pennsylvania, and that he has completed a mini-residency in the proper prescribing of controlled substances, as recommended by PHP.

It is the Hearing Committee's assessment, based upon the evidence presented, that Respondent has taken, and is taking, steps which tend to decrease the likelihood of a recurrence of drug abuse on his part, and since Respondent has remained drug-free for a number of years as of the date of this hearing, revocation of his license is not called for. However, the Hearing Committee also feels it would be appropriate to impose a 3-year period of probation, so that his continued progress toward recovery can be monitored and the residents of New York State protected against any relapse that might occur during that period. The terms of probation are outlined in the Order, which follows.

ORDER

IT IS HEREBY ORDERED THAT:

1. OPMC will monitor Respondent's completion of a three (3) year probationary period, to commence upon the effective date of this order, and to be monitored by OPMC.
2. The terms of Respondent's probation are as follows:
 - A). During the running of his probationary period in the State of New Jersey, Respondent will fully comply with all terms thereof, as set forth in the New Jersey Order. Upon successful completion of such probation, Respondent will provide OPMC with written verification from the New Jersey Board of his release therefrom.
 - B). If, during the period of his New York probation, the Respondent chooses to resume practice in New York, he must provide thirty (30) days prior written notice concerning his intention to the New York State Office of Professional Medical Conduct ("OPMC"). This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility since the date of this hearing. Included with this notice shall be documentation from PHP and the New Jersey Board as to his progress and status with these entities.
 - C). During his New York probation, Respondent shall remain drug free, except for drugs prescribed for Respondent by another physician for legitimate medical purposes.
 - D). During the period of probation, Respondent shall obtain drug sobriety monitoring, detailed more fully below. The monitor shall be a health care professional or monitoring agency proposed by Respondent and subject to the written approval of OPMC or its designee. Respondent shall be responsible for arranging for the monitor, and for ensuring that the monitoring meets the requirements of this order. OPMC shall ensure that the monitor is familiar with the provisions of this order. Respondent shall submit to OPMC or its designee the name of a

proposed successor within seven days of learning that the approved sobriety monitor is no longer willing or able to serve.

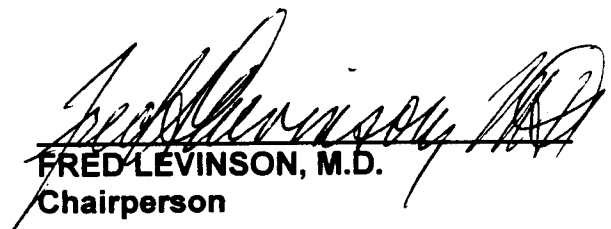
- E). The sobriety monitor shall direct Respondent to submit to random, supervised, unannounced tests of blood and/or urine for the presence of drugs, and shall report to OPMC or its designee within 24 hours if at any time such a test is refused by Respondent or is positive. Respondent shall report as soon as practicable to submit to drug screening. Respondent shall be screened at a frequency in the discretion of the monitor, subject to the approval of OPMC or its designee.
- F). Respondent shall notify in writing any a group, clinic or medical facility with whom he becomes affiliated or at which he practices during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.
- G). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which he is affiliated or at which he practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired physicians. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- H). Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice, professional and residential addresses or telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility during the probationary period, within 30 days of each event;
- I). If Respondent returns to New York to practice, he shall notify the Director of OPMC, in writing, if he ceases to be engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status.
- J). 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 and obligations imposed by law and by his profession. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.

- K). Respondent shall comply with all terms, conditions, and restrictions to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance.
- L). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.
- M). OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation, or any individual provision(s) thereof, if it is satisfied that such relief would not be contrary to the best interests of New York State residents.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

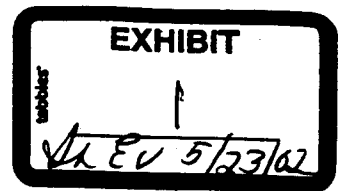
DATED: Middletown, New York

June 12 2002


FRED LEVINSON, M.D.
Chairperson

ERNST A. KOPP, M.D.
MR. JOHN D. TORRANT

APPENDIX I



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

IN THE MATTER
OF
JOHNNY RICK LARSEN, D.O.
CO-02-01-0068-A

NOTICE OF
REFERRAL
PROCEEDING

TO: JOHNNY RICK LARSEN, D.O.
4 Breckenridge Drive
Shamong, NJ 08088

JOHNNY RICK LARSEN, D.O.
Kimball Medical Center
600 River Avenue
Lakewood, NJ 08701

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 23rd day of May 2002, 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 May 3, 2002.

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 May 3, 2002, 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

March 28, 2002



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
JOHNNY RICK LARSEN, D.O.
CO-02-01-0068-A

STATEMENT
OF
CHARGES

JOHNNY RICK LARSEN, D.O., the Respondent, was authorized to practice medicine in New York state on January 18, 1990, by the issuance of license number 181265 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 14, 2001, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (hereinafter "New Jersey Board"), by a Final Order (hereinafter "New Jersey Order"), suspended Respondent's license for two (2) years, stayed the suspension to be served as probation, required him to continue to participate with the Physicians Health Program (PHP), and ordered him to pay not more than \$6,000.00 costs, based on Respondent having engaged in indiscriminate prescribing of controlled dangerous substances (hereinafter "CDS"), and having procured CDS through improper methods in order to maintain his addiction to CDS.

B. The conduct resulting in the New Jersey Board disciplinary actions 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 or beyond its authorized scope);
2. New York Education Law §6530(3) (negligence on more than one occasion);
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);
5. New York Education Law §6530(24) (practicing beyond the scope permitted by law); and/or
6. New York Education Law §6530(32) (inadequate record keeping).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by 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:


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

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *March 28*, 2002
Albany, New York


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