New York State Board for Professional Medical Conduct
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D.,M.P.H., Dr. P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

PUBLIC

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

March 30, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Stephen Levy, M.D.
280 Linden Tree Road
Wilton, CT 06897-1619

Re: License No. 146446

Dear Dr. Levy:

Enclosed please find Order #BPMC 04-62 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect April 6, 2004.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure
cc: Amy Kulb, Esq.
Jacobson and Goldberg
585 Stewart Avenue
Garden City, NY 11530

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

IN THE MATTER

OF

STEPHEN LEVY, M.D.

SURRENDER ORDER

BPMC No. 04-62

Upon the application of (Respondent) STEPHEN LEVY, M.D. to Surrender license as a physician in the State of New York, which is made a part of this Surrender Order, it is

ORDERED, that the Surrender, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 3/26/04

MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

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

IN THE MATTER

OF

STEPHEN LEVY, M.D.

SURRENDER

of

LICENSE

STEPHEN LEVY, M.D., representing that all of the following statements are true, deposes and says:

That on or about July 1, 1981, I was licensed to practice as a physician in the State of New York, and issued License No. 146446 by the New York State Education Department.

My current address is 280 Linden Tree Road, Wilton, CT 06897-1619 and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with forty-one specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Surrender of License.

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York, on the grounds that I agree not to contest the eighteenth specification of the statement of charges, in full satisfaction of the charges against me.

I agree that the Surrender of my license shall take effect sixty days (60) after the date of issuance of this order. During the 60 day period before I am required to completely cease the practice of medicine, I shall remain subject to the terms of the Order of Conditions issued on March 5, 2004 and annexed hereto as Exhibit C.

I ask the Board to accept the Surrender of my License.

I understand that if the Board does not accept this Surrender, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this application shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board accepts the Surrender of my License, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to accept this Surrender of License of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

DATED 3/15/04

STEPHEN LEVY, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Surrender of License and to its proposed penalty, terms and conditions.

DATE: 3-15-04

AMY KULB, ESQ.
JACOBSON AND GOLDBERG
Attorney for Respondent

DATE: 3/18/04

DANIEL GUENZBURGER
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/24/04

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

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

IN THE MATTER

OF

STEPHEN LEVY, M.D.

STATEMENT

OF

CHARGES

STEPHEN LEVY, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1981, by the issuance of license number 146446 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. In or about and between 1998 through July 2002, the Respondent, an ophthalmologist, treated Patients A through P at 187 East 116th Street, New York, New York. With respect to Patients A through H and J through O, Respondent deviated from medically accepted standards in his treatment of presumed macular irregularities in that on multiple occasions he:

1. Performed laser retinal treatments without an adequate pre-laser work-up, including failing to perform fluorescein angiogram studies.
2. Performed laser retinal treatments without adequate medical indication.
3. Inappropriately treated the Patients with sub-threshold laser treatments directed away from the area of presumed

pathology.

B. On or about September 27, 2000 the Respondent deviated from medically accepted standards with respect to Patient P in that he administered laser treatments for vitreous floaters.

C. On or about and between June 30, 1999 and March 8, 2000, the Respondent treated Patient G for a variety of ocular conditions at 13 office visits. Patient G was 82 years old at the onset of treatment. With respect to Respondent's glaucoma management, Respondent:

1. Inappropriately evaluated the Patient's visual field, including but not limited to relying on inadequately performed tangent screen examinations.
2. Performed ophthalmodynamometries without adequate indication.
3. Excessively ordered and/or performed the following:
   a. Gonioscopies.
   b. Tangent screen visual field tests.
   c. Ophthalmodynamometries.
   d. Ophthalmoscopies, extended with retinal drawing.

D. On or about and between April 7, 1999 and July 10, 2002, the Respondent treated Patient D for a variety of ocular conditions at 24 office visits. Patient D was 66 years old at the onset of treatment. With respect to Respondent's glaucoma management, Respondent:

1. Inappropriately evaluated the Patient's visual field, including but not limited to relying on inadequately performed tangent screen examinations.
2. Performed ophthalmodynamometries without adequate indication.
3. Excessively ordered and/or performed the following:
   a. Gonioscopies.
   b. Tangent screen visual field tests.
   c. Ophthalmodynamometries.
   d. Ophthalmoscopies, extended with retinal drawing.
4. Failed to appropriately respond to a significant increase in Patient D's optic disc cupping on or about December 12, 2001.

E. On or about and between October 27, 1999 and April 18, 2001, the Respondent treated Patient I for a variety of ocular conditions at 11 office visits. Patient I was 71 years old at the onset of treatment. With respect to Respondent's glaucoma management, Respondent:

1. Inappropriately evaluated the Patient's visual field, including but not limited to relying on inadequately performed tangent screen examinations.
2. Performed ophthalmodynamometries without adequate indication.
3. Excessively ordered and/or performed the following:

a. Gonioscopies.

b. Tangent screen visual field tests.

c. Ophthalmodynamometries.

d. Ophthalmoscopies, extended with retinal drawing.

4. Knowingly and falsely represented significant findings with respect to glaucoma management, including intra-ocular pressure and optic disc cupping. Respondent intended to deceive.

5. Performed a laser trabeculoplasty on the left eye on February 9, 2000, when the laser trabeculoplasty should have been performed on the right eye.

6. Inappropriately performed a laser trabeculoplasty on January 18, 2001. Respondent administered laser treatments to the same temporal area of the identical eye which he had treated less than one year before.

F. On or about and between June 15, 2000 and May 22, 2002, the Respondent treated Patient O for a variety of ocular conditions at 15 office visits. Patient O was 62 years at the onset of treatment. With respect to Respondent's glaucoma management, Respondent:

1. Inappropriately evaluated the Patient's visual field, including but not limited to relying on inadequately performed tangent screen examinations.

2. Performed ophthalmodynamometries without adequate indication.

3. Excessively ordered the following:
    a. Gonioscopies.
    b. Tangent screen visual field tests.
    c. Ophthalmodynamometries.
    d. Ophthalmoscopies, extended with retinal drawing.
4. Failed to appropriately respond to increased visual field constriction and increased intra-ocular pressure on April 17, 2002.

G. On or about and between January 14, 1998 and June 12, 2002 the Respondent treated Patient N for a variety of ocular conditions at 28 office visits. Patient N was 74 years old at the onset of treatment. With respect to Respondent's glaucoma management, Respondent:

1. Inappropriately evaluated the Patient's visual field, including but not limited to relying on inadequately performed tangent screen examinations.
2. Performed ophthalmodynamometries without adequate indication.
3. Excessively ordered and/or performed the following:
    a. Gonioscopies.
    b. Tangent screen visual field tests.
    c. Ophthalmodynamometries.
    d. Ophthalmoscopies, extended with retinal drawing.
4. Failed to appropriately respond to Patient N's marked

increase in optic disc cupping on or about March 25, 1998.

H. With regard respectively to Patients A through F and H through P, the Respondent failed to comply with substantial provisions of federal law, rules, or regulations governing the practice of medicine in that on multiple occasions he willfully and/or grossly negligently:

1. Submitted and/or caused to submit Medicare claims for reimbursement for office visits in which he falsely represented that the patients presented with problems of moderate to high severity, when, in fact, he knew that the presenting problem(s) were of minor or low severity. Physician providers who participate in Medicare are required to identify on a claim form the services they perform using the codes contained in the American Medical Association's Current Procedural Terminology manual, commonly referred to as "CPT codes". The CPT codes provide for 5 different levels of out-patient office visits, with the highest level of office visits reserved for a visit where the patient presents with a problem of moderate to high severity. Respondent falsely claimed that he performed the highest level of out-patient office visit (CPT Codes 99205 and 99215) in violation of Title 42 of the United States Code Section 1320a-7b.

2. Submitted and/or caused to submit Medicare claims for

office visits when the purpose of the visit was a routine refraction examination for eye glasses. Social Security Act Section 1862(a)(1)(7) prohibits Medicare reimbursement for such an office visit.

3. Submitted and/or caused to submit Medicare claims for physician services when the services were performed by Respondent's two physician assistant employees without direct supervision from the Respondent. Such conduct violates Title 42 of the United States Code Section 1320a-7b(a)(5), Social Security Act Section 1861(s)(2)A, and regulations at Title 42 of the Code of Federal Regulations Part 410.

4. Submitted and/or caused to submit Medicare claims for procedures that were neither "reasonable" nor "necessary for the diagnosis and treatment of illness", including performing laser retinal treatments without adequate medical indication and performing gonioscopies, tangent screen visual field examinations, ophthalmodynamometries and ophthalmoscopies, extended, at a greater frequency than necessary for reasonable medical management. Such conduct violates Social Security Act Section 1862(a)(1)(A).

I. By submitting Medicare claims for reimbursement for outpatient office visits using CPT Codes 99205 and 99215 (as previously alleged in

paragraph H(1), the Respondent knowingly intended to create the false impression that patients for whom he was billing Medicare presented with medical problems of moderate or high severity, when, in fact, he knew that the patients presented with medical problems of minor or low severity. Respondent intended to deceive.

J. The Respondent knowingly intended to create the false impression that he was billing for a legally reimbursable Medicare service, when, in fact, the Respondent knew that Medicare does not reimburse when the purpose of an office visit is for a routine refraction examination for eye glasses. The Respondent intended to deceive, with regard respectively to claims for services on the dates listed below:

1. Patient A ----July 31, 2000.
2. Patient B-----March 23, 2000.
3. Patient C-----February 6, 1997 and September 6, 1999.
4. Patient I-----September 8, 1999.
5. Patient J, .----September 7, 2001.
6. Patient K-----May 7,1998.
7. Patient N------April 20, 1999.

K. Respondent knowingly and falsely represented on Medicare claim forms that he had personally performed a "physician service", when, in fact, he knew that his physician assistant employees had furnished the service. Respondent intended to deceive, with regard respectively to claims for services on the dates listed below:

1. Patient A ----July 31, 2000.
2. Patient B-----March 23, 2000.
3. Patient C-----February 6, 1997 and September 6, 1999.
4. Patient I-----September 8, 1999.
5. Patient J.----September 7, 2001.
6. Patient K-----May 7,1998.
7. Patient N------April 20, 1999.

L. By submitting Medicare claims for reimbursement for multiple laser retinal treatments and diagnostic tests as previously alleged in paragraph H(4), the Respondent knowingly intended to create the false impression that he was billing Medicare for appropriately indicated medical services, when, in fact, he knew that the laser treatments and diagnostic tests were ordered and/or performed without adequate medical indication. The Respondent intended to deceive.

M. On or about August 12, 1999 the Respondent inappropriately proceeded with surgery for a nuclear cataract on Patient L's left eye without attempting to first improve the Patient's vision by refraction.

N. Respondent, with the intent to deceive, knowingly and falsely represented the Patient's visual acuity in the hospital record in connection with cataract surgeries performed at Mt Sinai Hospital, New York, New York:

1. Cataract surgery performed on Patient L's left eye on

August 12, 1999.

2. Cataract surgery performed on Patient M's left eye on December 23, 1999.

O. Respondent failed to maintain a record which accurately reflected the visual field examination for Patient G.

SPECIFICATION OF CHARGES

FIRST THROUGH SIXTEENTH SPECIFICATIONS
GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence on a particular occasion with respect to the care rendered to the following patients.

1. Patient A.
2. Patient B.
3. Patient C.
4. Patient D.
5. Patient E.
6. Patient F.
7. Patient G.
8. Patient H
9. Patient I.
10. Patient J.
11. Patient K.
12. Patient L.
13. Patient M.
14. Patient N.
15. Patient O.
16. Patient P.

SEVENTEENTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

17. A, A1, A2, A3, B, C, C1,C2, C3, C(3)(a), C3(b), C3(c), C3(d), D, D1, D2, D3, D3(a), D3(b), D3(c), D3(d), D4, E, E1, E2, E3, E3(a), E3(b), E3(c), E3(d), E4, E5, E6, F, F1, F2, F3, F3(a), F3(b), F3(c), F3(d), F4, G, G1, G2, G3, G3(a), G3(b), G3(c), G3(d), G4, M, N, N(1), N(2), N(3), O.

EIGHTEENTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

18. A, A1, A2, A3, B, C, C1,C2, C3, C(3)(a), C3(b), C3(c), C3(d), D, D1, D2, D3, D3(a), D3(b), D3(c), D3(d), D4, E, E1, E2, E3, E3(a), E3(b), E3(c), E3(d), E4, E5, E6, F, F1, F2, F3, F3(a), F3(b), F3(c), F3(d), F4, G, G1, G2, G3,

G3(a), G3(b), G3(c), G3(d), G4, M, N, N(1), N(2), N(3), O.

NINETEENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

19. A, A1, A2, A3, B, C, C1,C2, C3, C(3)(a), C3(b), C3(c), C3(d), D, D1, D2, D3, D3(a), D3(b), D3(c), D3(d), D4, E, E1, E2, E3, E3(a), E3(b), E3(c), E3(d), E4, E5, E6, F, F1, F2, F3, F3(a), F3(b), F3(c), F3(d), F4, G, G1, G2, G3, G3(a), G3(b), G3(c), G3(d), G4, M, N, N(1), N(2), N(3), O.

TWENTIETH THROUGH TWENTY-SEVENTH SPECIFICATIONS

UNWARRANTED TESTS/TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of:

20. A and A2.

21. B.

22. C, C2, C3, C3(a), C3(b), C3(c),and/or C3(d).

23. D, D2, D3, D3(a), D3(b), D3(c) and/or D3(d).

24. E, E2, E3, E3(a), E3(b), E3(c), E3(d) and/or E5.

25. F, F2, F3, F3(a), F3(b), F3(c) and/or F3(d).

26. G, G2, G3, G3(a), G3(b), G3(c), G3(d).

27. M.

TWENTY-EIGHTH THROUGH THIRTY-THIRD SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

28. E and E4.

29. I.

30. J, J1, J2, J3, J4, J5, J6 and/or J7.

31. K, K1, K2, K3, K4, K5, K6, and/or K7.

32. L

33. N, N1 and/or N2.

THIRTY-FOURTH THIRTY-NINTH SPECIFICATIONS

FALSE REPORTS

Respondent is charged with committing professional misconduct as

defined in N.Y. Educ. Law §6530(21) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

34. E and E4.
35. I
36. J, J1, J2, J3, J4, J5, J6 and/or J7.
37. K, K1, K2, K3, K4, K5, K6, and/or K7.
38. L
39. N, N1 and/or N2.

FORTIETH SPECIFICATION
FAILING TO COMPLY WITH A FEDERAL LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16) by willfully or grossly negligently failing to comply with substantial provisions of federal law, rules or regulations governing the practice of medicine, as alleged in the facts of:

40. H, H1, H2, H3,and/or H4.

FORTY-FIRST SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

41. O.

DATED: March 3, 2004
New York, New York

Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease and desist the practice of medicine in compliance with the terms of the Surrender Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.

2. Within fifteen (15) days of the Surrender Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.

3. Within thirty (30) days of the Surrender Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.

4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (30) days of the Surrender Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (3) years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.

5. Within fifteen (15) days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.

6. Within fifteen (15) days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at his practice location, Respondent shall dispose of all medications.

7. Within fifteen (15) days of the Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health

care services.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the Order's effective date.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four (4) years, under Section 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to $10,000 for each specification of misconduct, under Section 230-a of the Public Health Law.