

Public

**NEW YORK**  
state department of  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

May 11, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Richard J. Zahnleuter, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2509  
Albany, New York 12237-0032

Beverly JP Edwards, M.D.  
REDACTED

**RE: In the Matter of Beverly JP Edwards, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-109) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine 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  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation 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  
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,

REDACTED

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah  
Enclosure

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

In the matter of

**Beverley JP Edwards, M.D.**  
NYS license # 238740

**Determination  
and Order**

BPMC #11-109

**COPY**

A notice of referral proceeding and statement of charges, both dated January 21, 2011, were served on Respondent **Beverley JP Edwards, M.D.** The statement of charges alleged violation of New York State Education Law 6530. A hearing was held at offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York, on March 23, 2011.

Pursuant to Public Health Law 230(10)(e), **Michael R. Golding, M.D.**, Chairperson, **Eleanor C. Kane, M.D.**, and **Janet M. Miller, R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. **John Harris Terepka**, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by **James E. Dering, Esq.**, General Counsel, and appeared by **Richard J. Zahnleuter, Esq.** **Beverley JP Edwards, M.D.**, (the Respondent) did not appear, although duly served with notice of the hearing. Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the hearing committee issues this determination and order.

**JURISDICTION**

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health (the Department), and authorized it to conduct disciplinary proceedings in matters of professional medical conduct.

Definitions of professional misconduct applicable to physicians, physician assistants and specialist assistants are set forth in Ed.L 6530 and 6531. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(b),(c)&(d).

Pursuant to PHL 230(10)(p), a "direct referral procedure" is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

**EVIDENCE**

Witnesses for the Petitioner:	Debra M. Hotaling
Petitioner exhibits:	Department Exhibits 1-7, 8a-8i.

Witnesses for the Respondent:	None
Respondent exhibits:	Respondent Exhibit A.

A transcript of the hearing was made. (Transcript, pages 1-44.)

### **FINDINGS OF FACT**

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Beverley JP Edwards, M.D. was authorized to practice medicine in New York State on January 23, 2006 under license number 238740. (Department Exhibit 4.)
2. On January 21, 2010, the U.S. Drug Enforcement Administration suspended the Respondent's DEA registration pending a hearing in a proceeding to revoke her registration. (Department Exhibit 5.)
3. On January 29, 2010 the Medical Licensing Board of Indiana summarily suspended the Respondent's medical license for ninety days on the grounds that she had prescribed controlled substances, using the DEA registration number of another physician, while her own DEA registration was suspended. (Department Exhibit 6.)
4. On March 30, 2010, after a hearing, the Indiana Board revoked the Respondent's medical license and imposed a \$10,000 fine. (Department Exhibit 7.) In its decision and order, the Indiana Board made extensive findings of fact including:
  1. That the Respondent knowingly prescribed a drug classified as a narcotic, addicting or dangerous drug to a habitué or addict. (Stipulated conclusion of law 5.)
  2. That the Respondent prescribed controlled substances to ten persons the Respondent never personally physically examined or diagnosed. (Conclusion of law 2.)
  3. That the Respondent prescribed controlled substances to ten persons without a documented patient evaluation, including history and physical evaluation adequate to establish diagnosis and identify underlying conditions or contraindications to the treatment recommended or provided. (Conclusion of law 1.)

5. On July 30, 2010, the DEA revoked the Respondent's DEA registration on the grounds that her Indiana medical license had been revoked. (Department Exhibit 5.)

**HEARING COMMITTEE DETERMINATION**

After reviewing records obtained from the federal Drug Enforcement Administration and from the Medical Licensing Board of Indiana, (Department Exhibits 5, 6, 7), the hearing committee unanimously determined that as alleged in the statement of charges (first, second and third specifications), the Respondent violated Ed.L 6530(9)(b) and (d), which define professional misconduct, in pertinent part, as:

9. (b) 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.

\*\*\*

- (d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken... where the conduct resulting in the revocation, suspension or other disciplinary action involving the license... would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The hearing committee dismissed the charge (fourth specification) that Respondent violated Ed.L 6530(9)(c), which defines professional misconduct, in pertinent part, as:

9. (c) Having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination... when the violation would constitute professional misconduct pursuant to [PHL 6530].

**First, Second and Third specifications.**

The Indiana Board, in revoking the Respondent's license, specifically determined that the Respondent had prescribed narcotics to an addict, and had prescribed controlled substances to ten persons without performing and documenting either a physical examination or an adequate evaluation. (Department Exhibit 7.) The Respondent prescribed these

substances, in fact, without ever meeting the patients. The hearing committee agreed these actions constituted negligence, gross negligence, incompetence, and gross incompetence as defined Ed.L 6530(3)(4)(5)&(6). This constitutes professional misconduct under New York law. Ed.L 6530(9)(b)&(d).

In placing the Respondent's license on summary suspension, the Indiana Board also determined that the Respondent had used another physician's DEA number to issue prescriptions for two patients while her own federal DEA registration was under suspension. (Department Exhibits 5, 6.) The hearing committee agreed that these actions constituted practicing the profession fraudulently, as defined in Ed.L 6530(2), and also constituted willful or grossly negligent failure to comply with federal law (specifically 21 USC 822), as defined in Ed.L 6530(16). These actions therefore constituted professional misconduct under New York law. Ed.L 6530(9)(d).

The first, second and third specifications of misconduct are affirmed.

Fourth specification.

The Petitioner also charges that the DEA's suspension, and then revocation, of the Respondent's DEA registration establishes that she has been found guilty in an adjudicatory proceeding of violating a federal law, pursuant to a final decision or determination, when the violation would constitute professional misconduct in New York. Such a finding would establish misconduct pursuant to Ed.L 6830(9)(c).

The Ed.L 6830(9)(c) charge based upon the DEA's suspension of registration (factual allegation A) fails because the suspension was not a final decision or determination. As the Petitioner's own statement of charges points out, the DEA imposed the suspension by order

to show cause "during the pendency of the proceeding" to revoke the Respondent's DEA registration. (Department Exhibit 5.)

The charge based upon the DEA's eventual revocation of registration after a hearing (factual allegations F & G) also fails because the DEA revoked the Respondent's registration solely on the grounds that she no longer possessed an Indiana medical license. The Respondent's Indiana medical license was revoked during the pendency of the DEA proceeding. In its final decision, the DEA held:

... possessing authority under State law to handle controlled substances is an essential condition for holding a DEA registration... Respondent...lacks authority under Indiana law to dispense controlled substances in Indiana, the State in which she holds her DEA registration. Because Respondent is no longer entitled to maintain her DEA registration, her registration will be revoked. (Department Exhibit 5, discussion.)

The DEA determination was not based upon any of the reasons for which the Respondent's Indiana license was revoked. It was based solely on the effect that failure to possess an Indiana license had on her entitlement to a DEA registration number. It is not professional misconduct simply to no longer possess an Indiana medical license, nor is it professional misconduct under New York law to no longer possess the authority to handle controlled substances.

The fourth specification of misconduct is dismissed.

#### **PENALTY DETERMINATION**

The Petitioner recommended that the Respondent's medical license be revoked. (Transcript, pages 23, 43.) The evidence establishes that the Respondent was engaged in the large scale dispensing of prescriptions for controlled substances over the internet in an irresponsible and medically inappropriate manner. The hearing committee agreed that the findings of the Indiana Board show that allowing the Respondent to practice medicine in



New York would present a danger. The Respondent failed to appear personally to argue for a different conclusion. The documents she submitted by mail shortly before the hearing also failed to suggest a different conclusion. In the committee's view, they clearly demonstrated instead that the Respondent continues to deny both her guilt and her responsibility for her misconduct. (Respondent Exhibit A.) The hearing committee determined that revocation of the Respondent's license pursuant to PHL 230-a(4) is an appropriate penalty.

The hearing committee's vote sustaining the first, second and third specifications and revoking the Respondent's license was unanimous (3-0).

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in New York State is **REVOKED**.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

06 May 2011

By:

REDACTED

Michael R. Golding, M.D.  
Chairperson

Eleanor C. Kane, M.D.  
Janet M. Miller, R.N.

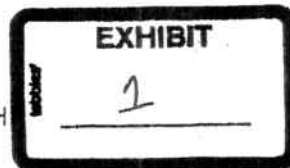
To: Richard J. Zahnleuter, Esq., Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower, Empire State Plaza  
Albany, New York 12237-0032

Beverley JP Edwards, M.D.

REDACTED

# **APPENDIX I**

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



IN THE MATTER  
OF  
BEVERLEY JP EDWARDS, M.D.  
CO-10-02-1259-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: BEVERLEY JP EDWARDS, M.D.

REDACTED

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§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 23<sup>rd</sup> day of March, 2011, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) days prior to the date of 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 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 written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

**YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here \_\_\_\_\_

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 (5) 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

*January 21*, 2011

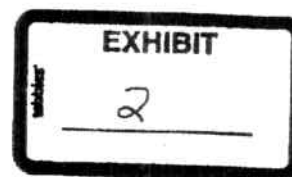
REDACTED

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

Inquiries should be addressed to:

Richard J. Zahnleuter  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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



---

IN THE MATTER  
OF  
BEVERLEY JP EDWARDS, M.D.  
CO-10-02-1259-A

---

STATEMENT  
OF  
CHARGES

BEVERLEY JP EDWARDS, M.D., Respondent, was authorized to practice medicine in New York State on January 23, 2006, by the issuance of license number 238740 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about January 21, 2010, the U.S. Drug Enforcement Administration ("DEA"), by an "Order to Show Cause and Immediate Suspension of Registration" (hereinafter "DEA Order 1"), pending a hearing, "immediately suspended" Respondent's DEA registration for Indiana because "continued registration during the pendency of the proceeding would constitute an imminent danger to the public health and safety," based on allegations that Respondent, among other things, prescribed controlled substances "over the Internet based on 'online questionnaires and/or webcam consultations and without first conducting an in person physical examination'" and without having "a legitimate medical purpose," and engaged in the unauthorized use of Respondent's DEA registration for Indiana while in a location outside Indiana.

B. On or about January 29, 2010, the Medical Licensing Board of Indiana (hereinafter "Indiana Board"), by a "Summary Suspension Order" (hereinafter "Indiana Order 1"), pending a final hearing, placed Respondent's license on "summary suspension" because "an emergency exists" and Respondent "represents a clear and immediate danger to the public health and safety if allowed to practice medicine," based on "evidence in the Board's file" that Respondent, on or about January 22, 2010, one day after her DEA registration was "immediately suspended," used the DEA registration of another physician to issue prescriptions for controlled substances.

C. The conduct resulting in the Indiana Board disciplinary action 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); and/or
2. New York Education Law §6530(16) (willful or grossly negligent failure to comply with federal law, namely the Federal Controlled Substances Act, including 21 USC 822).

D. On or about March 30, 2010, the Indiana Board, by a "Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order" (hereinafter "Indiana Order 2"), revoked Respondent's Indiana medical license, fined Respondent \$10,000.00, and imposed costs, based on Respondent having been found guilty by the Indiana Board of having:

1. prescribed a narcotic, addicting, or dangerous drug to an addict;
2. prescribed controlled substances to 10 persons Respondent "never personally physically examined or diagnosed";
3. prescribed controlled substances to 10 persons without a "documented patient evaluation, including history and physical evaluation adequate to establish diagnosis and identify underlying conditions or contraindications to the treatment recommended or provided."

E. The conduct resulting in the Indiana Board disciplinary action 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(3) (practicing the profession with negligence on more than one occasion);
2. New York Education Law §6530(4) (practicing the profession with gross negligence on a particular occasion);
3. New York Education Law §6530(5) (practicing the profession with incompetence on more than one occasion);
4. New York Education Law §6530(6) (practicing the profession with gross incompetence);
5. New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of state laws, rules, or regulations governing the practice of medicine, including, 10 NYCRR 80.63(c), 10 NYCRR 910.2(f), Public Health Law §3332(1), Public Health Law §3331(2), and Public Health Law §3350).

F. On or about July 30, 2010, effective September 15, 2010, DEA, by a "Revocation of Registration" (hereinafter "DEA Order 2"), revoked Respondent's DEA registration for Indiana, based on Respondent having had her Indiana medical license revoked on or about March 30, 2010 as set forth in paragraph D, herein.

G. The violation resulting in the DEA decision or determination would constitute professional misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(16) (willful or grossly negligent failure to comply with federal law, namely the Federal Controlled Substances Act, including 21 USC 824(a)(3) and 823(f)).

#### **SPECIFICATIONS OF MISCONDUCT**

##### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having her license to practice medicine revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation, 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:

1. The facts in Paragraphs B, C(1), and/or (2).

##### **SECOND 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:

2. The facts in Paragraphs D(1), (2), and/or (3), E(1), (2), (3), (4), and/or (5).



### THIRD SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having her license to practice medicine revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation, 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:

3. The facts in Paragraphs D(1), (2), and/or (3), E(1), (2), (3), (4), and/or (5).

### FOURTH SPECIFICATION

Respondent violated New York Education Law §6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to this section, in that Petitioner charges:

4. The facts in Paragraphs A, F and G, and/or G(1).

DATED: January 21, 2011  
Albany, New York

REDACTED

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