



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

May 19, 1997

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin P. Donovan, Esq.  
NYS Department of Health  
Empire State Plaza  
Corning Tower - Room 2503  
Albany, New York 12237

Lisa M. Codispoti, Esq.  
Whiteman, Osterman & Hanna  
PO Box 22016  
Albany, New York 12201

Philip S. Cifarelli, M.D., J.D., FCLM  
Cifarelli & Cifarelli & Cifarelli  
1001 North Ross Street  
Santa Ana, California 92701

Lucia M. Ferraro, M.D.  
200 Main Street  
Suite 104-102  
Huntington Beach, California 92648

### **RE: In the Matter of Lucia M. Ferraro, M.D.**

Dear Mr. Donovan, Ms. Codispoti, Mr. Cifarelli and Dr. Ferraro:

Enclosed please find the Determination and Order (No. BPMC-97-113) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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), 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.

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.

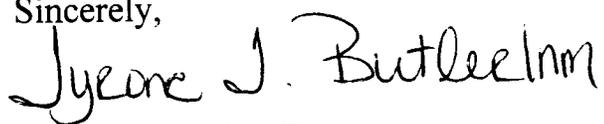
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

**COPY**

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

**IN THE MATTER**

**OF**

**LUCIA M. FERRARO, M.D.**

**DETERMINATION**

**AND**

**ORDER**

**BPMC-97-113**

A Notice of Hearing and Statement of Charges, both dated February 28, 1997, were served upon the Respondent, **LUCIA M. FERRARO, M.D.** **DENISE M. BOLAN, R.P.A.**, (Chair), **ERNST A. KOPP, M.D.** and **RAVENDRA N. SHARMA, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on April 16, 1997. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **KEVIN P. DONOVAN, ESQ.**, Associate Counsel, of Counsel. The Respondent appeared by **CIFARELLI, CIFARELLI & CIFARELLI, PHILIP S. CIFARELLI, M.D., J.D., FCLM** of Counsel and **WHITEMAN, OSTERMAN & HANNA, LISA M. CODISPOTI, 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 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. Respondent was authorized to practice medicine in New York State on October 17, 1983, by the issuance of license number 156073 by the New York State Education Department.  
(Pet. Ex. #2 )

2. By Stipulated Settlement and Disciplinary Order dated November 1, 1996, of the Medical Board of California, Respondent admitted gross negligence by leaving an operation for which she was administering anesthesia without having a replacement for her, and admitted practicing medicine while under the influence of a narcotic drug or alcohol. Respondent's license was revoked, with the revocation stayed, and probation for five years was imposed. Terms of probation include, among other things, psychiatric evaluation, psychotherapy, medical evaluation, passing a clinical examination, and various terms related to substance abuse monitoring. (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 unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent admitted that she was grossly negligent by leaving an operation for which she was administering anesthesia without securing a replacement. Respondent further admitted to practicing medicine while under the influence of a narcotic drug or alcohol. As a result, the California Board revoked Respondent's license, stayed the revocation and imposed probation for five years. The terms of probation include psychiatric and medical evaluations, psychotherapy, passing a clinical exam and substance abuse monitoring and participation in a diversion program. Section 6530(9)(b) defines professional misconduct as 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. Section 6530(9)(d) defines professional misconduct as having one's license to practice medicine revoked, suspended or having other disciplinary action taken, 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 of New York State. As a result, the Hearing Committee voted to sustain the First and Second Specifications of professional misconduct contained within 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 license to practice medicine in the State of New York should be suspended for a five (5) year period, said suspension to be stayed, and that Respondent be placed on probation during said five (5) year period of suspension. The period of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in writing, that Respondent has commenced a medical practice in New York State. The complete terms of probation are attached to this Determination and Order in Appendix II. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee found Respondent to be a credible witness. The Hearing Committee does not believe that Respondent's competency as a physician is in question because she appears to be well-trained and her practice difficulties arose from her impairment. The Hearing Committee is encouraged by Respondent's on-going rehabilitation. Respondent testified that she has accepted responsibility for her drinking. (T. 31) She further stated that she has maintained sobriety for over 11 months, that she regularly attends AA meetings and has an AA sponsor to rely upon in times of stress. (T. 29-31) The Hearing Committee believes that Respondent has more insight into her impairment and has a more structured plan for rehabilitation than her previous treatment program at Haoag Memorial Hospital.

For the aforementioned reasons, the Hearing Committee does not believe revocation in the name of public safety is warranted. Although the ultimate success of Respondent's rehabilitation remains untested, the Hearing Committee believes that a five (5) year probation with sobriety monitoring adequately protects the public while affording Respondent an opportunity for rehabilitation.

The Department argued that Respondent's license should be restricted from anesthesiology due the threat of cross-dependence to another drug. The Hearing Committee rejects this argument because they believe that forcing Respondent out of anesthesiology and limiting her to critical care would serve no purpose and creates unnecessary stress for her. Therefore, under the totality of the circumstances, a five (5) year stayed suspension with probation that includes sobriety monitoring, is the appropriate sanction in this instance.

**ORDER**

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

1. The Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**.
2. Respondent's license to practice medicine in New York State is hereby **SUSPENDED** for a period of five (5) years, said suspension to be **STAYED**.
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and she shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.
4. The periods of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in accordance with the Terms of Probation, of the fact that she has commenced a medical practice in New York State.

**Dated: New York, New York**

*May 19*, 1997

*Denise M. Bolan RPA-C*  
**DENISE M. BOLAN, R.P.A. (Chair)**

**ERNST A. KOPP, M.D.**  
**RAVENDRA N. SHARMA, M.D.**

(112)

**TO:** Kevin P. Donovan, Esq.  
Associate Counsel  
NYS Department of Health  
Corning Tower, Rm. 2503  
Albany, New York 12237-0032

Philip S. Cifarelli, M.D., J.D., FCLM  
Cifarelli & Cifarelli & Cifarelli  
1001 North Ross Street  
Santa Ana, California 92701

Lisa M. Codispoti, Esq.  
Whiteman, Osterman & Hanna  
P O. Box 22016  
Albany, New York 12201

Lucia M. Ferraro, M.D.  
200 Main Street  
Suite 104-102  
Huntington Beach, California 92648

## APPENDIX I

EXHIBIT  
RWH  
Pet. #1  
Recd 4-16-97

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

-----x  
IN THE MATTER : NOTICE OF  
OF : REFERRAL  
LUCIA M. FERRARO, M.D. : PROCEEDING  
-----x

TO: LUCIA M. FERRARO, M.D.  
200 Main Street  
Suite 104-102  
Huntington Beach, California 92648

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 16th day of April, 1997 at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the

licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before April 7, 1997.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge or Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before April 7, 1997, 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

*February 28*, 1997

*Peter D. Van Buren*

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

Inquiries should be addressed to:

Kevin P. Donovan  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2503  
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  
LUCIA M. FERRARO, M.D. : CHARGES

-----X

LUCIA M. FERRARO, M.D., the Respondent, was authorized to practice medicine in New York State on October 17, 1983, by the issuance of license number 156073 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. By Stipulated Settlement and Disciplinary Order dated November 1, 1996, of the Medical Board of California, Respondent admitted gross negligence by leaving an operation for which she was administering anesthesia without having a replacement for her, and admitted practicing medicine while under the influence of a narcotic drug or alcohol. Respondent's license was revoked, with the revocation stayed, and probation for five years was imposed. Terms of probation include, among other things, psychiatric evaluation, psychotherapy, medical evaluation, passing a clinical examination, and various terms related to substance abuse monitoring.

B. The conduct of which Respondent was found guilty in California would, if committed in New York State, constitute professional misconduct under the laws of New York State, and

gross negligence within the meaning of New York Education Law § 6530(4) (McKinney Supp. 1997), and practicing while impaired by alcohol or drugs within the meaning of New York Education Law § 6530(7) (McKinney Supp. 1997).

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

GUILTY OF MISCONDUCT IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9) (b) (McKinney Supp. 1997) in that she was 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 B.

SECOND SPECIFICATION

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9) (d) (McKinney Supp. 1997) in that she had disciplinary action taken against her license by a duly authorized professional disciplinary agency of another state, 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, in that Petitioner charges:

1. The facts of paragraphs A and B.

DATED: *February 28*, 1997

Albany, New York



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

## APPENDIX II

### TERMS OF PROBATION

1. Respondent shall comply with all terms and conditions of the five year probation imposed by the Medical Board of California as set forth in the Stipulated Settlement and Disciplinary Order dated November 1, 1996. (Pet. Ex. 3)

2. Respondent shall conduct herself at all times in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by her profession.

3. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

4. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street, 4th Floor, Troy, New York 12180, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

5. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

6. Prior to the commencement of a medical practice in New York State, Respondent shall submit written proof to the Director of the OPMC at the address indicated above that she has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department.

7. The Respondent will be monitored for sobriety by a qualified health care professional selected by Respondent, and approved by the Director of the Office of Professional medical Conduct.

8. The sobriety monitor will not be a close personal friend or relative of the Respondent. The sobriety monitor will supervise Respondent's compliance with the terms set forth in the Order.

9. The sobriety monitor's responsibilities include assessment of self-help group attendance (e.g. AA/NA/Caduceus, etc.) and 12 step progress, evaluation of compliance with the terms or conditions in the Order, and ordering urines for drug/alcohol assay.

10. Respondent shall submit the name of a proposed successor within seven (7) days of learning that the approved monitor is no longer willing or able to serve.

11. The Respondent will ensure that the sobriety monitor is familiar with Respondent's history of drug/alcohol abuse, and with all terms of probation.

12. The Respondent will meet with the sobriety monitor on a regular basis.

13. The Respondent will report for a urine drug screen within four (4) hours of being contacted by the monitor.

14. The Respondent will submit to random, unannounced observed screens of blood and/or urine for the presence of drugs/alcohol at the direction of the sobriety monitor who will report to the Office of Professional Medical Conduct immediately if a test is refused by Respondent or a test is positive for any unauthorized substance. This monitoring will be on a random, seven-day a week, twenty-four hour a day basis.

15. The Respondent will authorize the sobriety monitor to immediately report to the Office of Professional Medical Conduct any deviation from compliance with the terms of probation.

16. The Respondent will authorize the sobriety monitor to submit to the Office of Professional Medical Conduct quarterly reports certifying Respondent's compliance with the terms of probation. Respondent's failure to comply with any of the terms must be immediately reported to the Office of Professional Medical Conduct. The reports will include the results of all body fluid test for drugs/alcohol performed during that quarter, with copies of any toxicology reports. All urines must be forensically valid.

17. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.

18. Respondent shall comply with all terms, conditions, restrictions, and penalties to which she is subject pursuant to the Order of the Board. A violation of any of these terms of

probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.