

Public

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

IN THE MATTER
OF
STEPHEN R. LAUTERBACH, M.D.

MODIFICATION
ORDER

BPMC No. #03-163

Upon the proposed Application for a Modification Order of **STEPHEN R. LAUTERBACH, M.D.**, (Respondent), that is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing, by first class mail, a copy of the Modification Order to Respondent at the address in the attached Application or by certified mail to Respondent's attorney or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 5-27-2009

Redacted Signature

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
STEPHEN R. LAUTERBACH, M.D.

APPLICATION FOR
MODIFICATION ORDER

STEPHEN R. LAUTERBACH, M.D., (Respondent) being duly sworn deposes and says:

That on or about November 14, 1995, I was licensed to practice as a physician in the State of New York, having been issued license number 201398 by the New York State Education Department.

My current address is Faxon – 4th Floor, 1676 Sunset Avenue, Utica, NY 13502.

I am currently subject to Determination and Order BPMC – 03-163, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on June 18, 2003.

On January 18, 2006, by an Order Granting Petition for Relief, the State of California, Superior Court of California, County of San Diego, Ordered that: "(p)robation, currently in effect, be terminated, the conviction(s) herein be set aside, and the charge(s) dismissed pursuant to Penal Code 1203.3 & 1203.4 due to defendant's good conduct and reform."

In light of the January 18, 2006, Order of the State of California, I apply, hereby, to the New York State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: effective the date of this Modification Order, to delete the paragraph in the Original Order that states:

"2. Respondent's medical license is hereby placed on PROBATION for FIVE (5) years. The terms of probation are detailed below."

The Modification Order to be issued will not constitute a new disciplinary action against me.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification Order based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

AFFIRMED:

DATED: 5/13/09

Redacted Address

STEPHEN R. LAUTERBACH, M.D.
Respondent

The undersigned agree to the attached Application of Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 22 May 2009

Redacted Signature

~~ROBERT BOGAN~~
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 5-19-09

Redacted Signature

~~HENRY R. FENTON~~
Attorney for Respondent

DATE: 5/27/09

Redacted Signature

~~KEITH W. SERVIS~~
Director
Office of Professional Medical Conduct

EXHIBIT 1



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 24, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place – Suite 303
433 River Street
Troy, New York 12180

Edward Z. Menkin, Esq.
Law Offices of Edward Z. Menkin, Esq.
109 South Warren Street
State Tower Building-Suite 909
Syracuse, New York 13202

Stephen R. Lauterbach, M.D.

Stephen R. Lauterbach, M.D.

Redacted Address

Redacted Address

RE: In the Matter of Stephen R. Lauterbach, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-163) 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,

Redacted Signature

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
STEPHEN R. LAUTERBACH, M.D.

DETERMINATION

AND

ORDER

BPMC - 03-163

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated February 4, 2003, were served upon the Respondent, **STEPHEN R. LAUTERBACH, M.D.**. **DATTA G. WAGLE, M.D.**, Chairperson, **MANGALA RAJAN, M.D.** and **MS. CARMELA TORELLI**, 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 22, 2003, 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 by **EDWARD Z. MENKIN, 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 Section 6530(9)(a)(iii) based upon his conviction of a crime in another state. 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:

Stephen R. Lauterbach, M.D.

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." (the Department's exhibits were assigned numbers and the Respondent's were assigned letters), or transcript pages, denoted by "Tr. [page number]". 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.

1. **STEPHEN R. LAUTERBACH, M.D.**, the Respondent, was authorized to practice medicine in New York State on November 14, 1995, by the issuance of license number 201398 by the New York State Education Department (Ex. 4).
2. On August 27, 2002, Respondent pled guilty to one count of Infliction of a Corporal Injury to a Spouse or Roommate (his ex-wife), in violation of California Penal Code Section 273.5(a), a felony, in the Superior Court of California, County of San Diego. Respondent was sentenced to 17 days of incarceration, one day of which was stayed, 3 years probation, a \$200 fine and \$200 restitution (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent's conviction of a crime in another state constitutes misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(iii).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by having committed an act constituting a crime in another jurisdiction and which, if committed in New York State, would constitute a crime under New York State law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates, as noted above, that on August 27, 2002, Respondent pled guilty to one count of Infliction of a Corporal Injury to a Spouse or Roommate, in violation of California Penal Code Section 273.5(a), a felony, in the Superior Court of California, County of San Diego, and that the court sentenced him to 17 days of incarceration (one day of which was stayed) 3 years probation, a \$200 fine and \$200 restitution.

Respondent's conviction of a crime in California for acts that would have constituted criminal conduct in New York State constitutes misconduct under Education Law §6530(9)(a)(iii). The only issue remaining to be decided, therefore, is the appropriate penalty to be imposed in this state.

For reasons to be detailed below, the Hearing Committee concludes that the appropriate sanction is a 5-year license suspension, to be stayed, the imposition of a five-year New York license probation, the terms of which (including a public service requirement) are detailed below in the Order, and the imposition of a fine of \$5,000.

The Hearing Committee feels that a significant penalty is called for, given the seriousness of the criminal acts committed by Respondent. However, the Hearing Committee does not feel that license revocation is called for in this case, given Respondent's efforts to rehabilitate himself with respect to the problems that led to the criminal conviction for spousal battery. Some of those problems led to specific terms of probation in California, including abstinence from alcohol, the successful completion of an alcohol counseling program (it was admitted on Respondent's behalf that alcohol consumption played a role in the incident leading to the conviction. Ex. A; Tr. 18), and successful completion of a batterer's program of at least one year's duration.

Since the incident, Respondent has been enrolled in the California Medical Board's Diversion Program (his program is five years in duration; see Ex.'s B & C), and has successfully participated in the following documented activities (see Ex, A and sub-exhibits) designed to assist him in his rehabilitation efforts and to avoid any repetition of the behavior of the sort that led to the criminal conviction:

- Counseling with a behavioral psychologist;
- Treatment by a psychiatrist;
- The Domestic Violence program mandated by the criminal court;
- Use of a visitation liaison agency to facilitate visitations with his son without contact with his ex-wife;
- Support meetings for physicians with substance or alcohol abuse problems;
- The taking of random urine samples as part of the diversion program (Tr. 37-38);
- Participation in AA on weekends (Tr. 38).

In addition, the Hearing Committee is mindful of the fact that the incident that led to the criminal conviction was not related to the provision of medical care, and that, as far as this record reveals, there have been no other blemishes on Respondent's medical or criminal records. The Hearing Committee believes that the penalties to be imposed as a result of this proceeding are sufficient punishment for the acts committed, and that they will adequately serve to deter future incidents of misconduct and to protect residents of New York, should Respondent relocate here to practice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **STEPHEN R. LAUTERBACH, M.D.** is hereby **SUSPENDED** for a period of **FIVE (5)** years. The suspension is **STAYED**.
2. Respondent's medical license is hereby placed on **PROBATION** for **FIVE (5)** years. The terms of probation are detailed below.
3. A fine in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00)** is assessed against the Respondent. Payment of the fine shall be due within 60 days of the effective date of this Order. The Respondent shall make payment to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York, 12237. Any fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest; late payment charges and collection fees; referral to the New York Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).
4. The terms of Respondent's probation are as follows:
 - A). Prior to resuming practice in New York, Respondent 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, and must include verification that Respondent has successfully completed his probation in Kentucky.

- B). Respondent shall provide a copy of this decision to his California probation office and to the California Board, and provide verification of such to OPMC at the address listed above.
- C). Respondent shall fully comply with the terms of his California probation for so long as he is subject thereto. The California probation office should notify OPMC at the address listed above if there is any material and significant violation of the terms of probation.
- D). Should Respondent return to New York to practice, he shall enroll with the Committee for Physicians' Health (CPH) of the Medical Society of the State of New York, and participate in whatever monitoring or rehabilitative programs the Committee recommends after reviewing all pertinent documentation from the professionals and agencies providing services to Respondent in California. Respondent shall execute whatever releases are necessary to ensure that such documentation is made available to CPH.
- E). Should Respondent return to New York to practice during the period of his New York probation, he shall perform 200 hours of community service, preferably in a medical setting, to be approved by the Board.
- F). 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 also maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- G). Respondent shall notify in writing any 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.
- H). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must also provide, upon request, 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.

- I). 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;
- J). Should Respondent return to New York State to practice during the period of his New York probation, he shall notify the Director of OPMC, in writing, if he ceases to be engaged in or intends to leave such practice in New York for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status. Respondent's probation shall be tolled while Respondent is not practicing in New York during such period and shall resume upon his return to practice in New York State.
- 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.

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: **Williamsville, New York**
6/18/, 2003

Redacted Signature

DATTA G. WAGLE, M.D.,
Chairperson

MANGALA RAJAN, M.D.
MS. CARMELA TORELLI

APPENDIX 1

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

EXHIBIT 10
AL 5-27-03

IN THE MATTER
OF
STEPHEN R. LAUTERBACH, M.D.
CO-02-09-4802-A

NOTICE OF
REFERRAL
PROCEEDING

TO: STEPHEN R. LAUTERBACH, M.D.
Redacted Address

STEPHEN R. LAUTERBACH, M.D.
Redacted Address

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 19th day of March 2003, 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 March 10, 2003.

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 March 10, 2003, 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 4, 2003

Redacted Signature

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
STEPHEN R. LAUTERBACH, M.D.
CO-02-09-4802-A

STATEMENT
OF
CHARGES

STEPHEN R. LAUTERBACH, M.D., the Respondent, was authorized to practice medicine in New York state on November 14, 1995, by the issuance of license number 201398 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 27, 2002, in the Superior Court of California, County of San Diego, California, Respondent was convicted, based on a plea of guilty, of willfully and unlawfully inflicting corporal injury resulting in a traumatic condition upon a spouse, a former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, in violation of California Penal Code, Section 273.5(a), a felony, and on or about November 21, 2002, was sentenced to seventeen (17) days confinement, sixteen (16) days to be served, three (3) years probation, a \$200.00 fine, and \$200.00 restitution.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: Feb. 4, 2003
Albany, New York

Redacted Signature

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