



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.

Commissioner

Paula Wilson

Executive Deputy Commissioner

September 8, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

D. Leonard Vigderman, D.O.
8710 Cove Court
Tampa, Florida 33615

Kevin C. Roe, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building - Room 2412
Empire State Plaza
Albany, New York 12237

RE: In the Matter of D. Leonard Vigderman, D.O.

Dear Dr. Vigderman and Mr. Roe:

Enclosed please find the Determination and Order (No. BPMC-93-134) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 than 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), "(t)he 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 all action 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
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

Tyrone T. Butler nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

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IN THE MATTER
OF
D. LEONARD VIGDERMAN, D.O.

: HEARING COMMITTEE'S
: FINDINGS OF FACT,
: CONCLUSIONS,
: DETERMINATION
: AND ORDER

: No. BPMC-93- 134
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A Notice of Referral Proceeding and Statement of Charges, both dated May 25, 1993, were served upon the Respondent, D. Leonard Vigderman, D.O. Denise M. Bolan, R.P.A. (Chair), Joseph E. Geary, M.D., and John H. Hobika, 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(10)(e) of the Public Health Law. Gerald H. Liepshutz, Department of Health Hearing Officer, served as the Administrative Officer. A hearing was held on June 30, 1993. The Department of Health appeared by Kevin C. Roe, Esq., Associate Counsel. The Respondent did not appear at the hearing on June 30, 1993 in person or by representative, but he submitted documents by mail prior to the hearing. Evidence was received and a transcript of this proceeding was 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). That 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 or upon having had other disciplinary action taken concerning a license to practice medicine regarding conduct which would amount to professional misconduct, if committed in New York. The scope of this expedited hearing is limited by Public Health Law Section 230(10)(p) 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)(d) (First Specification) and 6530(9)(b) (Second through Fourth Specifications).

FINDINGS OF FACT

The following Findings of Fact were made unanimously (3-0) 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 was considered and rejected in favor of the cited evidence.

1. Respondent was authorized to practice medicine in New York State on February 11, 1947 by the issuance of license number 045338 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994, with an address of 8710 Cove Court, Tampa, Florida, 33615. (Uncontested)

FIRST SPECIFICATION

2. On or about August 8, 1986, the Florida Department of Professional Regulation and the Board of Osteopathic Medical Examiners filed an administrative complaint against Respondent charging failure to keep written medical records justifying the course of treatment of patients; gross or repeated malpractice or the failure to practice medicine with a level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under the conditions and circumstances; and prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice, in regard to Respondent's care and treatment of nine patients. On or about July 25, 1988, the Florida Department of Professional Regulation and the Board of Osteopathic Medical Examiners placed Respondent on probation for two years and assessed a fine of \$3,000.00 as the result of the

administrative complaints filed on or about August 8, 1986.
(Petitioner's Ex. 4)

3. The conduct resulting in this Florida disciplinary action would, if committed in New York State, constitute professional misconduct under New York Education Law Section 6530(3) - negligence on more than one occasion, (4) - gross negligence, (5) - incompetence on more than one occasion, (6) - gross incompetence, and (32) - failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. (Petitioner's Ex. 4)

4. The conduct resulting in this Florida disciplinary action would not, if committed in New York State, constitute professional misconduct under New York Education Law Section 6530(2) - practicing the profession fraudulently or beyond its authorized scope, because said conduct does not support a finding of intentional deception or unauthorized practice as required in New York State. (Petitioner's Ex. 4)

SECOND SPECIFICATION

5. On or about August 8, 1991, the Florida Department of Professional Regulation and the Board of Osteopathic Medical Examiners found that Respondent failed to practice osteopathic medicine with that level of care, skill and treatment recognized as acceptable under the conditions and circumstances in violation of Florida Statutes §459.015(1)(y); failed to keep written medical records justifying his course of treatment in violation of Florida Statutes §459.015(1)(p); and misrepresented or concealed a

material fact during a phase of a licensing or disciplinary process or procedure in violation of Florida Statutes §459.015(1)(k). Respondent's license to practice medicine in the State of Florida was suspended for two years, followed by two years of probation, and he was fined \$6,000.00. (Petitioner's Ex. 5)

6. The conduct upon which the findings were based would, if committed in New York State, constitute professional misconduct (fraudulent practice, negligence on more than one occasion, gross negligence, incompetence on more than one occasion, gross incompetence, and failing to maintain a record for each patient which accurately reflects the evaluation of treatment of the patient) under New York Education Law Section 6530(2), (3), (4), (5), (6), and (32). (Petitioner's Ex. 5)

THIRD SPECIFICATION

7. On or about August 12, 1991, the Florida State Board of Osteopathic Medical Examiners found that Respondent had made an incorrect representation in renewing his license to practice osteopathic medicine in violation of Florida Statute §459.015(1)(a). Respondent was placed on probation for one year to run concurrent with the probation imposed in Case No. 90-4701 and he was fined an additional \$1,000.00. (Petitioner's Ex. 6)

8. The conduct upon which the findings were based would not, if committed in New York State, constitute professional misconduct (fraudulent practice) under New York Education Law Section 6530(2). An element of fraudulent practice

in New York State is an intention to deceive. The Florida Board found that Respondent "read, or should have read the Physician's License Renewal form sufficiently to be aware of the language therein." (Petitioner's Ex. 6 at p. 000016, Finding of Fact 15, adopted by Florida Board in its Final Order) A finding that Respondent "read or should have read" is not a finding of intentional deception as required in New York State to sustain a fraudulent practice charge.

FOURTH SPECIFICATION

9. On or about November 30, 1992, the Texas State Board of Medical Examiners revoked Respondent's license to practice medicine in the State of Texas based on findings that he had previously been disciplined in the State of Florida in violation of §308(21) of the Texas Medical Practice Act." (Petitioner's Ex. 7)

10. The conduct for which Respondent's license to practice medicine in the State of Texas was revoked would, if committed in New York State, constitute professional misconduct under New York Education Law Section 6530(9)(d). (Petitioner's Ex. 7) The Hearing Committee notes, however, that Section 6530(9)(d) defines professional misconduct as having had disciplinary action taken in another state for conduct which would be professional misconduct if committed in New York State. This charge, therefore, is actually a mirror image of itself. As a technical matter the charge should be sustained, but it is not,

as set forth, recognized as being based on underlying conduct separate from the **FIRST** and **SECOND SPECIFICATIONS** herein.

CONCLUSIONS

The following conclusions were made pursuant to the findings of fact herein. All conclusions resulted from a unanimous (3-0) vote of the Hearing Committee.

FIRST SPECIFICATION

This Specification is sustained, except for the allegation that the conduct which resulted in the Florida disciplinary conduct would constitute professional misconduct under New York Education Law 6530(2). (Findings of Fact 2-4)

SECOND SPECIFICATION

This Specification is sustained. (Findings of Fact 5-6)

THIRD SPECIFICATION

This Specification is not sustained. (Findings of Fact 7-8)

FOURTH SPECIFICATION

This Specification is sustained, but it is not recognized as being based on conduct separate from the **FIRST** and **SECOND SPECIFICATIONS**.

DETERMINATION AND ORDER

The **FIRST SPECIFICATION** (as modified), **SECOND SPECIFICATION** and **FOURTH SPECIFICATION** have been sustained. The **THIRD SPECIFICATION** has not been sustained.

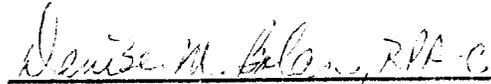
The Hearing Committee determines that there is no reason to believe that Respondent is any more competent to

practice medicine at this time than he was when he committed acts of negligence and incompetence in Florida. Furthermore, his act of fraudulent practice in relation to the **SECOND SPECIFICATION** evidences a moral unfitness to practice medicine.

IT IS HEREBY ORDERED:

THAT, pursuant to Section 230-a(4) of the Public Health Law of the State of New York, Respondent's license to practice medicine in the state is revoked.

DATED: Newcomb, New York
August 26, 1993



**DENISE M. BOLAN, R.P.A.
CHAIR**

**JOSEPH E. GEARY, M.D.
JOHN H. HOBIKA, M.D.**

**TO: D. Leonard Vigderman, D.O.
300 Bay Drive
#30
Niceville, Florida 32578**

**Keven C. Roe, Esq.
Associate Counsel
NYS Department of Health
Corning Tower Building
Room 2438
Albany, New York 12237**

APPENDIX I

DCH - [unclear]
Exh 1
6/30/93
SAC
ID X EVDZ ✓

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: D. LEONARD VIGDERMAN, D.O. : PROCEEDING
: :
-----X

TO: D. LEONARD VIGDERMAN, D.O.
8710 Cove Court
Tampa, Florida 33615

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 30th day of June at 2:15 o'clock in the afternoon of that day at Corning Tower Building, Room 2509, Empire State Plaza, Albany, New York 12237.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 18, 1993 .

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 18, 1993 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 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
May 25, 1993

Peter D. Van Buren

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

Inquiries should be addressed to:

Kevin C. Roe
Associate Counsel
(518) 474-8266

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

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IN THE MATTER : STATEMENT
OF : OF
D. LEONARD VIGDERMAN, D.O. : CHARGES

-----X

D. LEONARD VIGDERMAN, D.O., the Respondent, was authorized to practice medicine in New York State on February 11, 1947 by the issuance of license number 045338 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 with an address of 8710 Cove Court, Tampa, Florida 33615.

FACTUAL ALLEGATION

A. On or about August 8, 1986, the Florida Department of Professional Regulation and the Board of Osteopathic Medical Examiners filed an administrative complaint against Respondent charging failure to keep written medical records justifying the course of treatment of patients; gross or repeated malpractice or the failure to practice medicine with a level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under the conditions and

circumstances; and prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice, in regard to Respondent's care and treatment of nine patients. On or about July 25, 1988, the Florida Department of Professional Regulation and the Board of Osteopathic Medical Examiners placed Respondent on probation for two years and assessed a fine of \$3,000.00 as the result of the administrative complaints filed on or about August 8, 1986. The conduct resulting in the Florida disciplinary action would, if committed in New York State, constitute professional misconduct under N.Y. Education Law §§6530(2), (3), (4), (5), (6) and/or (32).

B. On or about August 8, 1991, the Florida Department of Professional Regulation and the Board of Osteopathic Medical Examiners found that Respondent failed to practice osteopathic medicine with that level of care, skill and treatment recognized as acceptable under the conditions and circumstances in violation of Florida Statutes §459.015(1)(y); failed to keep written medical records justifying his course and treatment in violation of Florida Statutes §459.015(1)(p); and misrepresented or concealed a material fact during a phase of a licensing or disciplinary process or procedure in violation of Florida Statutes §459.015(1)(k). Respondent's license to practice medicine in the State of Florida was suspended for two years,

followed by two years of probation, and he was fined \$6,000.00. The conduct upon which the findings were based would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §§6530(2), (3), (4), (5), (6) and/or (32).

C. On or about August 12, 1991, the Florida State Board of Osteopathic Medical Examiners found that Respondent had made a fraudulent misrepresentation in renewing his license to practice osteopathic medicine in violation of Florida Statute §459.015(1)(a). Respondent was placed on probation for one year to run concurrent with the probation imposed in Case No. 90-4701 and fined an additional \$1,000.00. The conduct upon which the findings were based would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(2).

D. On or about November 30, 1992, the Texas State Board of Medical Examiners revoked Respondent's license to practice medicine in the State of Texas based on findings that he had previously been disciplined in the State of Florida in violation of §308(21) of the Texas Medical Practice Act. The conduct for which Respondent's license to practice medicine in the State of Texas was revoked would, if committed in New York State, constitute misconduct under N.Y. Educ. Law §6530(9)(d).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with having disciplinary action taken against him after a disciplinary action was instituted 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 violation of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1993) [formerly N.Y. Educ. Law §6509(5)(d)], in that, Petitioner alleges:

1. The facts in Paragraph A.

SECOND THROUGH FOURTH SPECIFICATIONS

Respondent is charged with 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 violation of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1993) [formerly N.Y. Educ. Law §6509(5)(b)], in that, Petitioner alleges:

2. The facts in Paragraph B.
3. The facts in Paragraph C.

4. The facts in Paragraph D.

DATED: Albany, New York

May 25, 1993

Peter D. Van Buren

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