



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

Dennis P. Whalen
Executive Deputy Commissioner

July 20, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Deborah Ellen Banker, M.D.
29201 Heathercliff Road, #135
Malibu, California 90265-4146

William H. Dailey, Esq.
8749 Holloway Drive
West Hollywood, California 90069

Deborah Ellen Banker, M.D.
14658 Magnolia Boulevard
Sherman Oaks, California 91403

RE: In the Matter of Deborah Ellen Banker, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-166) 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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

COPY

IN THE MATTER

OF

DEBORAH ELLEN BANKER, M.D.

DETERMINATION

AND

ORDER

BPMC #01-166

A Notice of Referral Proceeding and a Statement of Charges (Petitioner's Exhibit 1), both dated February 28, 2000, were served upon the Respondent, **Deborah Ellen Banker, M.D.**, by the New York State Department of Health ("the Petitioner"). A hearing was held on September 21, 2000, and a Determination and Order (Petitioner's Exhibit 8) was issued on October 4, 2000. The Petitioner appealed the Determination and Order to the Administrative Review Board for Professional Medical Conduct ("ARB"). The ARB, after considering the hearing record and briefs submitted by the parties, remanded the case for further proceedings (Petitioner's Exhibit 14). Subsequently, the original Statement of Charges was supplemented by a Supplemental Statement of Charges (Petitioner's Exhibit 18) dated April 3, 2001.

A second hearing was held on June 21, 2001, at the offices of the Petitioner. **Fred Levinson, M.D.**, Chairperson, **Jill Rabin, M.D.**, and **Randolph Manning, Ph.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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in

person and was represented by **William H. Dailey, Esq.**, 8749 Holloway Drive, We Hollywood, California 90069.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues th Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). Th statute provides for an expedited hearing when 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 State or anothe jurisdiction, or upon a prior administrative adjudication regarding conduct that woul amount to professional misconduct, if committed in New York. The scope of an expeditec 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)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1. The Supplemental Statement of Charges is attached as Appendix 2.

WITNESSES

For the Petitioner:	None
For the Respondent:	Deborah Ellen Banker, M.D.
	Rev. Linda Newcombe
	Mr. Giuseppe Labarbera
	Mr. Donald Bramlett
	Mr. Kenneth Greenwald

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in the findings of fact 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. Deborah Ellen Banker, M.D., the Respondent, was authorized to practice medicine in New York State on December 18, 1981, by the issuance of license number 007091 by the New York State Education Department (Petitioner's Exhibit 4).
2. On December 17, 1998, the Colorado State Board of Medical Examiners ("Colorado Board") approved a Stipulation and Final Agency Order ("Colorado Order") in which the Respondent agreed never to reinstate her lapsed license, never to apply for a new license and never to perform any act requiring a license issued by the Colorado Board (Petitioner's Exhibit 5). The Colorado Order stated that "[n]othing in this agreement shall constitute a finding that Respondent has engaged in unprofessional conduct."
3. On March 28, 2001, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs ("California Board") by a Decision adopting a Stipulated Settlement and Order ("California Settlement"), issued a public reprimand, ordered the Respondent to complete successfully a Physician Assessment and Clinical Education ("PACE") Program and an ethics course and to reimburse the California Board \$2000.00 for the costs of prosecution (Petitioner's Exhibit 17). This action was based on an admission by the Respondent that she had practiced medicine in Colorado after her Colorado medical license had lapsed.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION – ORIGINAL STATEMENT OF CHARGES

“Respondent is charged with professional misconduct by reason of having violated New York State Education Law Section 6530(9)(d) by reason of having surrendered his license to practice medicine or having had disciplinary action taken after a disciplinary action instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the surrender or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state...”

VOTE: Not sustained (3-0)

FIRST SPECIFICATION – SUPPLEMENTAL STATEMENT OF CHARGES

“Respondent violated New York Education Law Section 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...”

VOTE: Sustained (3-0)

SECOND SPECIFICATION – SUPPLEMENTAL STATEMENT OF CHARGES

“Respondent violated New York Education Law Section 6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized 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...”

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Hearing Committee concludes that the hearing record does not contain sufficient evidence to support the charges in the original Statement of Charges. There is a Formal Complaint (Petitioner's Exhibit 5, pp. 7-12) in the documents from Colorado that accuses the Respondent of acts that arguably would constitute professional misconduct under New York State law had the acts been committed in New York State. However, the Colorado Order (Petitioner's Exhibit 5, pp. 2-4) makes no findings of fact regarding those charges and the Respondent makes no admissions regarding these charges anywhere in the Colorado documentary evidence. To the contrary, the Colorado Order states that "[n]othing in this agreement shall constitute a finding that Respondent has engaged in unprofessional conduct" (Petitioner's Exhibit 5, pp. 3).

Despite this language, the Petitioner argued that the existence of the Colorado Order is sufficient evidence to find that professional misconduct occurred. The Petitioner contended that when, as here, the Respondent is charged under New York Education Law Section 6530(9)(d), all that needs to be proved is the existence of an order from another state imposing a license revocation, license suspension or other disciplinary action in a proceeding in which the Respondent has been charged with professional misconduct. This is an erroneous interpretation of Education Law Section 6530(9)(d). In addition to the requirement that there be such an order, the statute by its own language, is limited to situations "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 documentary evidence from Colorado proves what the charges were against the Respondent, but charges against a physician and the physician's conduct are not the same thing. Given the disclaimer about unprofessional conduct in the Colorado Order, no conclusion can be

drawn fairly about what the Respondent's conduct was, let alone that it would constitute unprofessional conduct under New York State law had the conduct been committed in New York State.

This conclusion of the Hearing Committee is consistent with case law in New York State. In Becker v. DeBuono, 239 A.D.2d 664, 657 N.Y.S.2d 471 (3rd Dept. 1997), the Court annulled a professional misconduct finding that was based on a consent order from New Jersey. The Court gave the following rationale for its determination:

Significantly, petitioner's consent order in New Jersey contained no plea of guilty on behalf of petitioner, nor any admission by petitioner of any guilt or wrongdoing. On the contrary, petitioner's consent order specifically stated that "no findings of liability or wrongdoing are being made against [petitioner]" and further contained a total denial of wrongdoing by petitioner. Inasmuch as no hearing was ever held in New Jersey and no findings of guilt were ever made, it would defy due process and the concept of fairness to use unsubstantiated allegations and inconclusive findings with the force of affirmative or offensive collateral estoppel effect against petitioner.

There are no significant differences between the present case and the Becker case. It is concluded that the Colorado documentary evidence does not provide a basis for a professional misconduct finding against the Petitioner pursuant to the original Statement of Charges.

The Supplemental Statement of Charges is based on documentation from a disciplinary proceeding in California. In paragraph 9 of the California Settlement (Petitioner's Exhibit 17, p. 5), the Respondent admitted that she engaged in the practice of medicine after her license to practice had lapsed. If such conduct had occurred in New York State, it would have constituted professional misconduct under New York Education Law Section 6530(12) which defines practicing medicine while a license is suspended or inactive as professional misconduct.

The Respondent did not dispute that such conduct constitutes professional misconduct in New York State. The Respondent's opposition to the use of the California

Settlement against her was limited to a claim that there is language in the California Settlement that prohibits its use in the present proceeding. That language, which appears in paragraph 9 after the admission described above, states that "[t]hese admissions are made for the purpose of this Stipulated Settlement and Order only and may not be used for any other purpose" (Petitioner's Exhibit 17, p. 5). Contrary to the Respondent's argument, this language is of no legal effect for anyone other than the parties who signed the California Settlement. The California Board and the Respondent can place such limitations on themselves, but have no authority to prohibit the Petitioner from acting in response to the California Settlement. The Petitioner has legal responsibilities and authority under New York's Public Health Law and Education Law to take action in response to evidence of professional misconduct. That authority and responsibility to protect patients in New York State cannot be negated by a stipulation claiming that nobody else can act in response to a physician's admission of professional misconduct.

The Petitioner cited Education Law Section 6530 which provides that professional misconduct "charges may be dismissed in the interest of justice" and argued that this is an appropriate case for such a dismissal. The Petitioner noted that her transgression was not intentional and caused no harm to her patients. She introduced the testimony of five patients who expressed their gratitude for the medical care that they had received from the Respondent as well as numerous letters praising the quality of her medical care and her dedication to her patients (Respondent's Exhibit C).

The Petitioner requested that the Respondent's license be revoked. The Petitioner claimed that the Respondent's testimony was not honest and truthful in several respects and that this merited a revocation of her license.

The Hearing Committee is not persuaded by either the request for a dismissal of the charges or the request for a revocation. The Respondent did practice with a lapsed

license and there should be some type of negative consequence for this. A revocation of her license, however, would be an extremely excessive consequence, given the fact that there is no evidence that the Respondent's transgression was the result of willfulness rather than carelessness. As for the Respondent's allegedly dishonest testimony, assuming purely for the sake of argument that it was dishonest, it does not convert a minor transgression into a major one. A hearing committee can only impose sanctions for acts of professional misconduct appearing in a statement of charges; it cannot, in effect, add a perjury charge during the hearing and impose a sanction for that perjury. A hearing committee can take a respondent's honesty or lack thereof during the hearing into consideration in determining how serious the penalty will be for an act of professional misconduct, but a committee cannot use such dishonesty to impose a penalty out of all proportion to the act of professional misconduct that appears in the statement of charges. The sanction must be within the range of reasonable sanctions for the type of professional misconduct that was charged and found by the committee to have been committed. In this case, a censure and reprimand and documentation of compliance with the California Settlement are sufficient remedies for the protection of patients in New York State.

ORDER

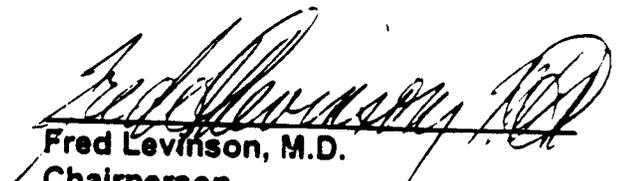
IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded.
2. As a prerequisite to the resumption of practice in New York State, the Respondent must submit documentation of successful compliance with all the requirements of the California Settlement to the New York State Department of Health, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Suite 303,

Troy, New York 12180-2299. Such documentation must be submitted at least 60 da
prior to the resumption of practice.

3. This Order shall be effective upon service on the Respondent or th
Respondent's attorney by personal service or by certified or registered mail.

DATED: Middletown, New York
7/17, 2001


Fred Levinson, M.D.
Chairperson

Jill Rabin, M.D.
Randolph Manning, Ph.D.

APPENDIX I

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

In EV 6/21

IN THE MATTER
OF
DEBORAH ELLEN BANKER, M.D.

NOTICE
OF
REFERRAL
PROCEEDING

76

TO: DEBORAH ELLEN BANKER, M.D.
14658 Magnolia Blvd.
Sherman Oaks, CA 91403

DEBORAH ELLEN BANKER, M.D.
29201 Heathercliff Road, #135
Malibu, CA 90265-4146

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 18th day of April, 2000 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 10, 2000.

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 10, 2000 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, 2000



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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518)402-0820

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

-----X

IN THE MATTER
OF
DEBORAH ELLEN BANKER, M.D.

STATEMENT
OF
CHARGES

-----X

DEBORAH ELLEN BANKER, M.D., the Respondent, was authorized to practice medicine in New York State on December 18, 1981 by the issuance of license number 148882 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 17, 1998, the State Board of Medical Examiners, State of Colorado (hereinafter "Colorado Board"), approved a Stipulation and Final Agency Order (hereinafter "Colorado Order"), wherein, Respondent agreed never to reinstate her lapsed license, never to apply for a new license, and never to perform any act requiring a license issued by the Colorado Board, based on a formal complaint that alleged negligence, practicing with a lapsed license, prescribing controlled substances when her authority to do so had lapsed, and failing to comply with rules.

B. The conduct resulting in the Colorado Board's 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 beyond its authorized scope);

2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(12) (practicing while the license is inactive);
4. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine); and/or
5. New York Education Law §6530(24) (practicing beyond the scope permitted by law).

SPECIFICATION

Respondent is charged with professional misconduct by reason of having violated New York State Education Law §6530(9)(d) by reason of having surrendered her license to practice medicine or having had disciplinary action taken after a disciplinary action instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender or other 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 in paragraphs A and/or B.

DATED: *Feb 28*, 2000
Albany, New York


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

APPENDIX II

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

DEBORAH ELLEN BANKER, M.D.
CO-99-03-6602-A

SUPPLEMENTAL
STATEMENT

OF

CHARGES

DEBORAH ELLEN BANKER, M.D., the Respondent, was authorized to practice medicine in New York state on December 19, 1981, by the issuance of license number 148882 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 28, 2001, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, (hereinafter "California Board"), by a Decision (hereinafter "California Order"), publicly reprimanded Respondent, required her to successfully complete a PACE Program and an ethics course, and to pay \$2000.00 costs of prosecution, based on an out of state discipline by the State of Colorado (as set forth in State of New York, Department of Health, State Board for Professional Medical Conduct, Statement of Charges, dated February 28, 2000, Paragraph "A") in that she engaged in the practice of medicine in Colorado when her license to practice in that state had lapsed.

B. The conduct resulting in the California 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(9)(b) (having been found guilty of improper professional practice or professional medical conduct by another state);

2. New York Education Law §6530(9)(d) (having had disciplinary action taken by another state);
3. New York Education Law §6530(12) (practicing while the license is inactive).
4. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine); and/or
5. New York Education Law §6530(20) (moral unfitness).

SPECIFICATIONS
FIRST 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:

1. The facts in paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had 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 disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *April 3*, 2001
Albany, New York


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



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

Dennis P. Whalen
Executive Deputy Commissioner

January 17, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Deborah Ellen Banker, M.D.
14658 Magnolia Boulevard
Sherman Oaks, California 91403

Deborah Ellen Banker, M.D.
29201 Heathercliff Road, #135
Malibu, California 90265-4146

Scott Tips, Esq. & V. Bianco, Esq.
807 Montgomery Street
San Francisco, California 94133

Robert Bogan, Esq. &
Paul Robert Maher, Esq.
NYS Department of Health
433 River St. – Hedley Bldg. –4th Fl.
Troy, New York 12180

RE: In the Matter of Deborah Ellen Banker, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-280) of the Professional Medical Conduct Administrative Review Board 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:

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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah

Enclosure

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

In the Matter of

Deborah Ellen Banker, M.D. (Respondent)

Administrative Review Board (ARB)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Determination and Order No. 00-280

COPY

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):
For the Respondent:**

**Paul Robert Maher, Esq.
Scott C. Tips, Esq.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2000), the ARB considers whether to remand this case to a BPMC Committee, for the Committee to proceed with a hearing. At an initial hearing below, after a pre-hearing motion, the Committee decided against proceeding with a hearing, after their Administrative Officer ruled that insufficient evidence existed to prove the charge that the Respondent's misconduct in another state would constitute misconduct in New York. After considering the record on review, we remand for the Committee to proceed with the hearing and to determine, as an issue of fact, whether the full evidence supports the charge against the Respondent.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 2000) because:

- the duly authorized professional disciplinary agency from a sister state (Colorado) took action against the Respondent's License in that state, for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The New York action followed a Stipulation and Final Agency Order (Stipulation) by the Colorado Board of Medical Examiners (Colorado Board) to resolve a formal complaint against the Respondent before the Colorado Board [Petitioner's Exhibit 5]. The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the misconduct in Colorado that resulted in the Stipulation would constitute misconduct if committed in New York, under the following categories:

- practicing the profession beyond its authorized scope, a violation under N. Y. Educ. Law § 6530(2) (McKinney Supp. 2000),
- practicing the profession with negligence on more than one occasion, a violation under N. Y. Educ. Law § 6530(3) (McKinney Supp. 2000),
- practicing the profession with an inactive license, a violation under N. Y. Educ. Law § 6530(12) (McKinney Supp. 2000),
- willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations that pertain to medical practice, a violation under N. Y. Educ. Law § 6530(16) (McKinney Supp. 2000), and,
- practicing the profession beyond the scope permitted by law, a violation under N. Y. Educ. Law § 6530(29) (McKinney Supp. 2000).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2000), before a BPMC Committee, who rendered the Determination which the ARB now reviews. In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Petitioner's Exhibit 5 shows that the Colorado Board brought charges against the Respondent in 1998 for:

- failing to renew her Colorado medical license in 1997 and allowing the license to lapse,
- unprofessional conduct concerning her treatment to two patients,

- practicing without a license,
- failing to respond to letters concerning complaints from the Colorado Board and the Quebec Licensing Board for Physicians, and,
- prescribing controlled substances after her U.S. Drug Enforcement Agency prescribing authority lapsed.

In December 1998, the Respondent entered the Stipulation with the Colorado Board. In the Stipulation, the Respondent agreed to waive her right to a hearing on the charges, and to never reinstate her lapsed license, apply for a new license or perform any act requiring a license. The Stipulation stated that nothing in the agreement would constitute a finding that the Respondent engaged in unprofessional conduct.

At the New York Direct Referral Proceeding, the Respondent's counsel moved to dismiss the charges against the Respondent, by arguing that the Colorado Stipulation provided no grounds on which to bring a disciplinary action against the Respondent, because the Stipulation dismissed the charges against the Respondent [Hearing Transcript page (Tr) 21]. The Petitioner's counsel opposed that motion and argued that, under § 6530(9)(d), the Committee could infer validity to the underlying Colorado charges because the Respondent agreed never renew to her Colorado License [Tr 26-27]. After hearing these arguments, the Committee's Administrative Officer advised the Committee against proceeding with a hearing and the Committee agreed.

Review History and Issues

The Committee rendered a written Determination against proceeding on October 18, 2000. This proceeding commenced on October 24, 2000, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the

hearing record, the Petitioner's brief and response brief and the Respondent's brief and response brief. The record closed when the ARB received the Respondent's response brief on December 4, 2000.

The Petitioner asks that the ARB remand this case to the Committee for the hearing to proceed. The Petitioner argues that the Stipulation provides a basis to proceed under Matter of Sternberg v. DeBuono, 235 A.D.2d 945 (3rd Dept. 1997). In that case involving charges under §6530(9)(d), the physician surrendered his Florida medical license and agreed to never re-apply to settle a misconduct action in that state. In a New York Direct Referral Proceeding involving Dr. Sternberg, a BPMC Committee and then the ARB considered the underlying charges in the Florida action in assessing whether to impose a penalty against Dr. Sternberg's license in New York. In upholding the ARB Determination to impose a penalty against Dr. Sternberg's New York license, the Appellate Division for the Third Department held that a BPMC Committee could consider the underlying Florida charges when assessing a penalty, because the Florida proceedings prompted Dr. Sternberg to surrender his license in that state. In the current case on review, the Petitioner asserts that they will offer proof during a remand hearing so the Committee below can determine whether the Respondent's Colorado misconduct would constitute professional misconduct under New York law.

The Respondent argues that the Committee dismissed the charges correctly, because no evidence supported the charges. As support for that argument, the Respondent cites a recent Third Department decision Matter of Khan v. N.Y.S. Dept. of Health, 274 A.D.2d 784, 711 N.Y.S.2d 69 (3rd Dept. 2000). In that case involving charges under § 6530(9)(d), the Court annulled a Determination that a BPMC Committee and the ARB had based, in part, on a Consent Order that settled a disciplinary action in Arizona. The Arizona Consent stated that Dr. Khan

entered the consent solely to terminate the Arizona disciplinary dispute and that nothing in the Arizona Consent constituted an admission by Dr. Khan. The Respondent argues that her Stipulation contains language similar to the language in Dr. Khan's Arizona Consent and that the Stipulation goes further by exculpating her from any contention that she ever engaged in professional misconduct. The Respondent requests that the ARB reject the Petitioner's remand request.

Determination

The ARB has considered the record and the parties' briefs. We vote to remand for the Committee to hold a hearing. We find the sole issue on this review similar to the issues in two other recent ARB cases, *Matter of Harvey G. Herberman, M.D.*, ARB 99-303, 1999 WL 561798 (N.Y.D.O.H. Admin. Rev. Bd.); and, *Matter of Naim S. Bashir, M.D.*, ARB 98-304, 1998 WL 1093907. Both those cases involved charges under § 6530(9)(d). In both cases, a BPMC Hearing Committee's Administrative Officer refused to allow a hearing to proceed, because the Petitioner's sole proof on the charges came from other state's Consent Orders that contained no admissions or factual findings. After reviewing both cases, we remanded for hearings because the determination, whether sufficient evidence exists to prove charges under §6530(9)(d), lies with the Committee as a finding of fact, rather than with the Administrative Officer as a matter of law.

Contrary to the contentions in the Respondent's brief and response brief, the Committee below never dismissed the charges in the case. The final line in the Committee's Determination indicates that the Committee chose against proceeding due to the ruling from their Administrative Officer. During the arguments below, on the Respondent's motion to dismiss, the

Committee's Administrative Officer stated that the Committee wouldn't dismiss without hearing the evidence [Tr. 16, lines 7-9]. The Committee never heard the evidence, however, because the Administrative Officer made his ruling following the dismissal motion and the hearing ended at that point.

Pursuant to our authority under Public Health Law § 230-c(4)(b), we remand for the Committee to conduct a full Direct Referral Proceeding and to determine whether the Respondent committed professional misconduct. If the Committee has any questions concerning the remand order, they may direct those questions to the ARB, through a letter from their Administrative Officer to the Administrative Officer for the ARB, on notice to both parties.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

The ARB **REMANDS** this case to the Committee for further proceedings.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Deborah Ellen Banker, M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Banker.

Dated: 1/12/01, 2000

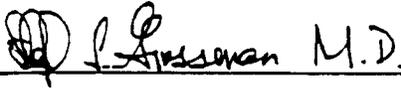
A handwritten signature in black ink, appearing to read "W. S. Price", is written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Deborah Ellen Banker, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Banker.

Dated: December 29, 2000

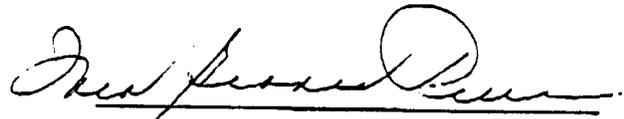
 M.D.

Stanley L. Grossman, M.D.

In the Matter of Deborah Ellen Banker, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Banker.

Dated: Dec 28, 2000



Thea Graves Pellman

In the Matter of Deborah Ellen Banker, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Banker.

Dated: Dec 28, 2000

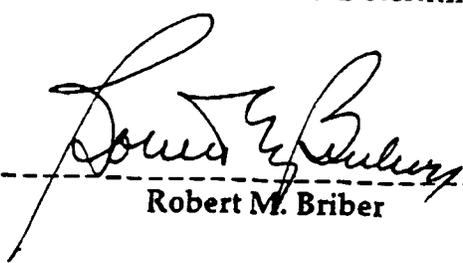
Therese G. Lynch M.D.

Therese G. Lynch, M.D.

In the Matter of Deborah Ellen Banker, M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Banker.

Dated: December 29, 2000



 Robert M. Briber

*error just
above review
history*

KeyCiteSM



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 16, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Deborah Ellen Banker, M.D.
14658 Magnolia Boulevard
Sherman Oaks, California 91403

Deborah Ellen Banker, M.D.
29201 Heathercliff Road, #135
Malibu, California 90265-4146

Scott Tips, Esq. & V. Bianco, Esq.
807 Montgomery Street
San Francisco, California 94133

Robert Bogan, Esq. &
Paul Robert Maher, Esq.
NYS Department of Health
433 River St. – Hedley Bldg. –4th Fl.
Troy, New York 12180

RE: In the Matter of Deborah Ellen Banker, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-280) 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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER
OF
DEBORAH ELLEN BANKER, M.D.

DETERMINATION
AND
ORDER
BPMC – 00-280

A Notice of Referral Proceeding and Statement of Charges, both dated February 28, 2000, were served upon the Respondent, **DEBORAH ELLEN BANKER, M.D.**

STEVEN GRABIEC, M.D., Chairperson, **JOHN MORTON, M.D.** and **MR. JAMES DUCEY**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 21, 2000, at the Best Western Rensselaer Inn, 1800 Sixth Avenue, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **TIPS & ASSOCIATES**, 807 Montgomery Street, San Francisco, California 94133 by **SCOTT TIPS, ESQ.**, and **V. BIANCO, ESQ.**, of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

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 case, 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)(d). A copy of the Notice of Referral Proceedings and the Statement of Charges are attached to this Determination and Order as Appendix 1.

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. All Hearing Committee findings were unanimous unless otherwise specified.

1. DEBORAH ELLEN BANKER, M.D., the Respondent, was authorized to practice medicine in the State of New York on December 18, 1981, by the issuance of license number 148882 by the New York State Education Department. (Pet's Ex. 4).

2. On December 17, 1998, the State Board of Medical Examiners, State of Colorado (hereinafter "Colorado Board"), approved a Stipulation and Final Agency Order (hereinafter "Colorado Order"), wherein, Respondent agreed never to reinstate her lapsed license, never to apply for a new license, and never to perform any act requiring a license issued by the Colorado Board. (Pet's Ex. 5).

3. There were no hearings in the Colorado matter. The Colorado Board made no findings; the Respondent made no admissions; and paragraph #7 of the "Colorado Order" specifically provided that "Nothing in this agreement shall constitute a finding that Respondent has engaged in unprofessional conduct."

LEGAL ISSUE

The Respondent's Answer (Resp's Ex. A) states as the FIRST AFFIRMATIVE DEFENSE that the Statement of Charges fails to state a claim upon which relief may be granted against Respondent.

In this case, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d).

Section 6530(9)(d) of the Education Law provides:

Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her 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 involving the license or refusal, revocation, or suspension of an application for a license or the surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State;

The charges in this case arise from a prior action against the Respondent by the Colorado State Board of Medical Examiners. In that case the parties entered into a "Stipulation and Final Agency Order" which provided in part,

- #3) On July 27, 1998 the Panel filed a formal complaint against Respondent pursuant to the provisions of §12-36-118(5), C.R.S.
- #4) It is the purpose of this agreement to resolve all matters alleged in that formal complaint.
- #5) Respondent understands that:
 - a. She has a right to be represented by an attorney of Respondent's choice and is so represented;
 - b. She has the right to a formal disciplinary hearing pursuant to §12-36-118(5), C.R.S.;

- c. By entering into this agreement, Respondent is knowingly and voluntarily giving up the right to a hearing;
- d. Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Panel.

#6) Respondent hereby agrees never to reinstate her lapsed license. Respondent hereby agrees never to apply for a new license issued by the Board. Respondent hereby agrees never to perform any act requiring a license issued by the Board.

#7) Nothing in this agreement shall constitute a finding the Respondent has engaged in unprofessional conduct.

After listening to the legal arguments on the issue the Administrative Officer ruled that the Respondent's position was correct.

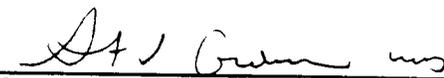
In this case the Petitioner is relying solely on unproven allegations brought against the Respondent in the Colorado formal complaint.

The Administrative Officer ruled that absent any hearings, findings or admissions in the Colorado matter, and given the fact that the "Colorado Order" specifically provided that,

"Nothing in this agreement shall constitute a finding that the Respondent had engaged in unprofessional conduct", the Hearing Committee could not determine what conduct committed in Colorado, would constitute professional misconduct, if committed in New York. (See: In the Matter of Muhammad Azam Kahn v. N.Y.S. Department of Health, et al., Supreme Court—Appellate Division—Third Department, Memorandum and Judgment, Decided and Entered: July 20, 2000).

Based on the legal ruling of the Administrative Officer, the Hearing Committee determined not to proceed with the hearing.

DATED: *Oct. 7*, 2000
Plattsburgh Falls, New York



STEVEN GRABIEC, M.D.
Chairperson

JOHN MORTON, M.D.
MR. JAMES DUCEY

APPENDIX I



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

IN THE MATTER
OF
DEBORAH ALLEN BANKER, M.D.

NOTICE
OF
REFERRAL
PROCEEDING

TO: DEBORAH ALLEN BANKER, M.D.
14658 Magnolia Blvd.
Sherman Oaks, CA 91403
DEBORAH ALLEN BANKER, M.D.
29201 Heathercliff Road, #135
Malibu, CA 90265-4146

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 18th day of April, 2000 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 10, 2000.

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 10, 2000 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, 2000



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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518)402-0820

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

-----X

IN THE MATTER
OF
DEBORAH ELLEN BANKER, M.D.

STATEMENT
OF
CHARGES

-----X

DEBORAH ELLEN BANKER, M.D., the Respondent, was authorized to practice medicine in New York State on December 18, 1981 by the issuance of license number 148882 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 17, 1998, the State Board of Medical Examiners, State of Colorado (hereinafter "Colorado Board"), approved a Stipulation and Final Agency Order (hereinafter "Colorado Order"), wherein, Respondent agreed never to reinstate her lapsed license, never to apply for a new license, and never to perform any act requiring a license issued by the Colorado Board, based on a formal complaint that alleged negligence, practicing with a lapsed license, prescribing controlled substances when her authority to do so had lapsed, and failing to comply with rules.

B. The conduct resulting in the Colorado Board's 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 beyond its authorized scope);

2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(12) (practicing while the license is inactive);
4. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine); and/or
5. New York Education Law §6530(24) (practicing beyond the scope permitted by law).

SPECIFICATION

Respondent is charged with professional misconduct by reason of having violated New York State Education Law §6530(9)(d) by reason of having surrendered her license to practice medicine or having had disciplinary action taken after a disciplinary action instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender or other 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 in paragraphs A and/or B.

DATED: *Feb 28*, 2000
Albany, New York


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