



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

February 6, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
433 River Street – 4th Floor
Troy, New York 12180

Steven D. Gelbard, M.D.
3500 Salt Ocean Drive
Fort Lauderdale, Florida 33308

Steven D. Gelbard, M.D.
8130 Royal Palm Boulevard
Coral Springs, Florida 33065

RE: In the Matter of Steven D. Gelbard, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-31) 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, 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
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

DETERMINATION

AND

ORDER

BPMC #01-31

IN THE MATTER
OF
STEVEN D. GELBARD, M.D.

A Notice of Referral Proceeding and Statement of Charges, both dated, September 11, 2000, were served upon the Respondent, **STEVEN D. GELBARD, M.D.**

TERESA S. BRIGGS, M.D., Ph.D., Chairperson, **RICHARD KASULKE, M.D.** and **MR. IRVING CAPLAN**, 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 January 17, 2001, 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 in person on his own behalf.

Evidence was received and transcripts of these proceeding 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 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)(a)(ii) and (9)(d). A copy of the Notice of Referral Proceeding and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Steven D. Gelbard, M.D.,
the Respondent

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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 stated.

1. **STEVEN D. GELBARD, MD.**, the Respondent, was authorized to practice medicine in New York State on August 7, 1987, by the issuance of license number 171648 by the New York State Education Department. (Pet's. Ex. 4)

2. On October 27, 1998, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), fined Respondent \$10,000.00, and required him to take and complete a five (5) hour Continuing Medical Education course in Risk Management.

The action by the "Florida Board" was based on the Respondent's inappropriately prescribing legend drugs, and his failing to keep medical records justifying a course of treatment. (Pet's. Ex. 5)

3. On November 21, 1999, in the United States District Court, Southern District of Florida, Respondent was convicted of five (5) counts of violating 26 U.S.C. §7203, Failure to File Income Tax Returns, and was sentenced to three (3) years probation, one hundred eighty (180) days home detention, \$125.00 assessment, and \$31,964.00 restitution. (Pet's Ex. 6)

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct resulting in the Florida 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:

- New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations);
- New York Education Law §6530(32) (failure to maintain records for each patient accurately reflecting treatment of the patient).

VOTE OF THE HEARING COMMITTEE **(All Votes Were Unanimous Unless Otherwise Specified)**

SPECIFICATIONS **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by reason of 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 of New York State.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by reason of having been convicted of committing an act constituting a crime under federal law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on October 27, 1998, the Florida Board of Medicine issued a Final Order requiring the Respondent to take and complete a five (5) hour Continuing Medical Education course in Risk Management and fined him \$10,000 based on the Respondent's inappropriately prescribing legend drugs and failing to maintain medical records justifying a course of treatment.

Also, on November 21, 1999, in U.S. District Court, Southern District of Florida, the Respondent was convicted of five (5) counts of violating 26 U.S.C. §7203, Failure to File Income Tax Returns, and was sentenced to three (3) years probation; 180 days home detention; \$125.00 assessment and \$31,964.00 restitution.

The Respondent testified at the instant hearing and he was a very credible witness. He testified that the one patient who was involved in this case was in fact his then wife who was also his office administrator.

He readily acknowledged prescribing legend drugs, including various antibiotics and controlled substances, for his wife, who had undergone back surgeries and other invasive procedures performed by other physicians, in attempts to treat her chronic back pain. The evidence in the record indicates that the medications prescribed by the Respondent were appropriate.

He explained that he did maintain medical records justifying the course of treatment, but that his wife took those records from his office, a fact that was acknowledged during a bitter divorce proceeding.

With regard to the federal conviction, the Respondent testified that he did in fact pay his 1992, 1993 and 1994 federal income taxes, but that his wife did not file the required income tax returns with the Internal Revenue Service as he had expected in her capacity as office manager.

The Respondent and his wife have since divorced.

The Hearing Committee accepts the Respondent's explanations regarding the charges against him. The Florida Consent Agreement specifies only one patient, the Respondent's former wife, and does not establish a pattern of practice.

The Respondent has already been penalized by the "Florida Board" and the Federal District Court.

Given the above-cited circumstances, the Hearing Committee believes that any action against the Respondent's New York State license would be unwarranted and would serve no useful purpose.

The Hearing Committee determines that no action should be taken against the Respondent's New York State medical license.

APPENDIX I

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

IN THE MATTER

OF

STEVEN D. GELBARD, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Steven D. Gelbard, M.D.
3500 Salt Ocean Drive
Fort Lauderdale, Florida 33308

Steven D. Gelbard, M.D.
8130 Royal Palm Blvd.
Coral Springs, Florida 33065

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 20th day of October, 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.

EXHIBIT

J. E. ...

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, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 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 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 October 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

September 11, 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, New York 12180
(518) 402-0820

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

IN THE MATTER
OF
STEVEN D. GELBARD, M.D.

STATEMENT
OF
CHARGES

Steven D. Gelbard, M.D., the Respondent, was authorized to practice medicine in New York state on August 7, 1987, by the issuance of license number 171648 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 27, 1998, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), fined Respondent \$10,000.00, and required him to take and complete Continuing Medical Education in pain management, based on inappropriately prescribing legend drugs, failure to keep medical records justifying a course of treatment, and delegating professional responsibilities to a person not qualified to perform them.

B. On or about November 21, 1999, in the United States District Court, Southern District of Florida, Respondent was convicted of five (5) counts of violating 26 U.S.C. §7203, Failure to File Income Tax Returns, and was sentenced to three (3) years probation, one hundred eighty (180) days home detention, \$125.00 assessment, and \$31,964.00 restitution.

C. The conduct resulting in the Florida 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(16) (failure to comply with federal, state, or local laws, rules, or regulations);

~~DELEGATE~~

2. New York Education Law §6530(25) (delegating professional responsibilities to a person not qualified to perform them); and/or

3. New York Education Law §6530(32) (failure to maintain records for each patient accurately reflecting treatment of the patient).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by reason of 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 of New York state, in that Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by reason of having been convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

2. The facts in paragraph B.

DATED: Albany, New York
September 11, 2000

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