



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Public

Dennis P. Whalen
Executive Deputy Commissioner

July 7, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Wexler, M.D.
Inmate No. 55248-054
MDC Brooklyn
Metropolitan Detention Center
P.O. Box 329002
Brooklyn, New York 11232

David Wexler, M.D.
5 East 76th Street
New York, New York 10021

Robert Bogan, Esq.
NYS Department of Health
Hedley Building -4th Floor
433 River Street
Troy, New York 12180

RE: In the Matter of David Wexler, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-147) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

COPY

IN THE MATTER
OF
DAVID WEXLER, M.D.

DETERMINATION

AND

ORDER

BPMC #06-147

A hearing was held on June 21, 2006, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Summary Order and Notice of Hearing and a Statement of Charges, both dated May 8, 2006, were served upon the Respondent, **David Wexler, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Patrick F. Carone, M.D., M.P.H.**, Chairperson, **Trevor A. Litchmore, M.D.**, and **Ms. Virginia R. Marty**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

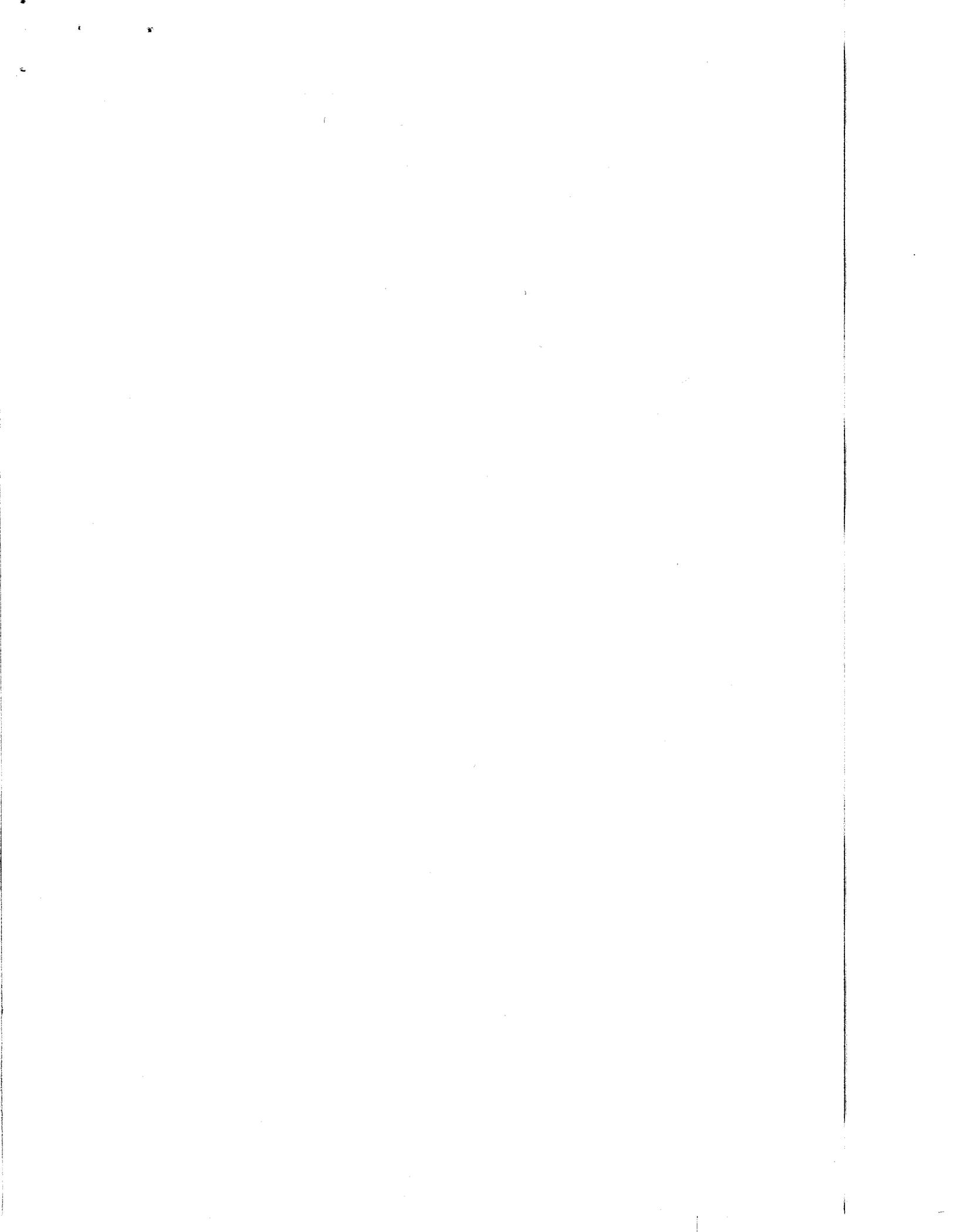
The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing, either in person or by counsel.

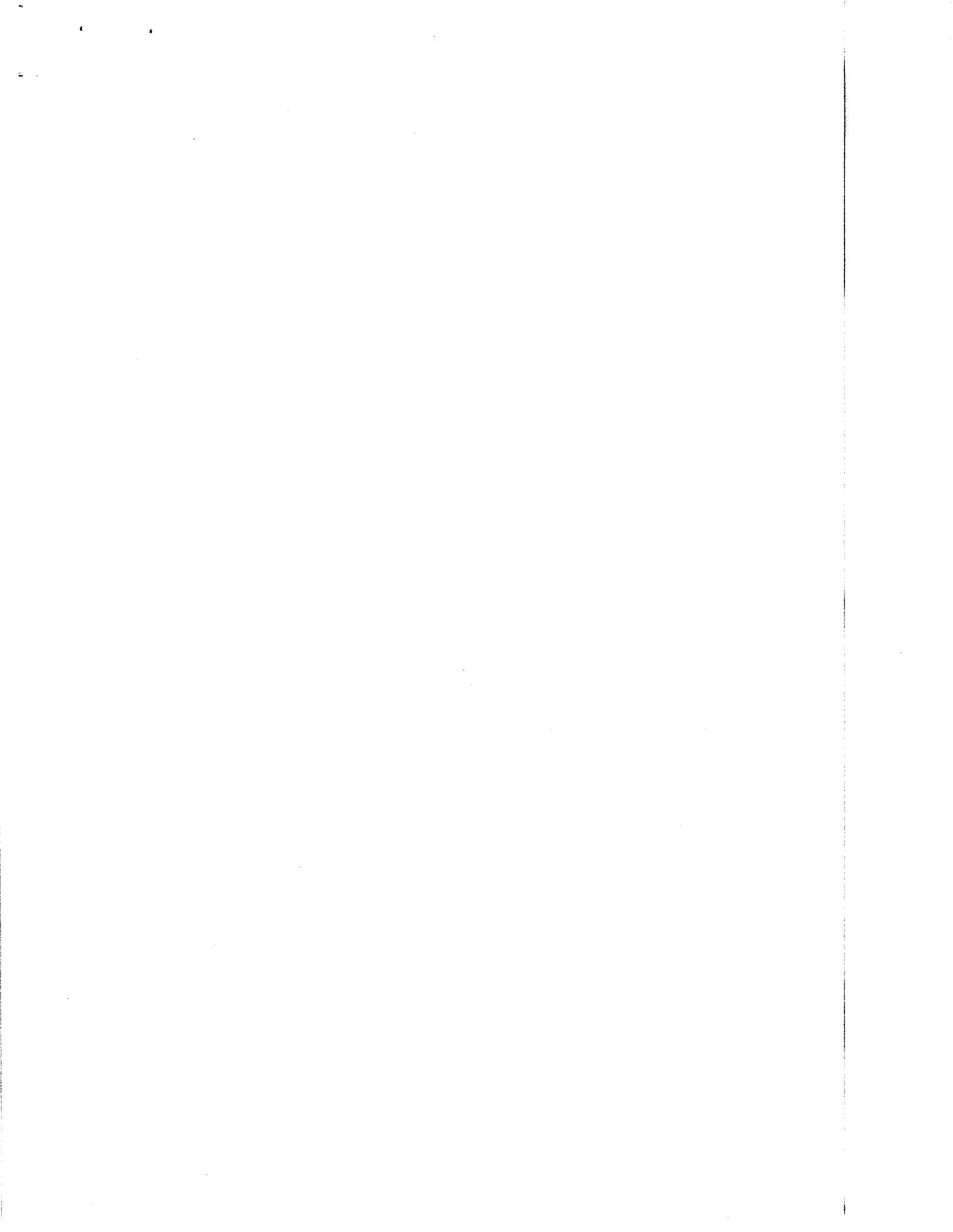
Evidence was received and transcripts of these proceedings were made.

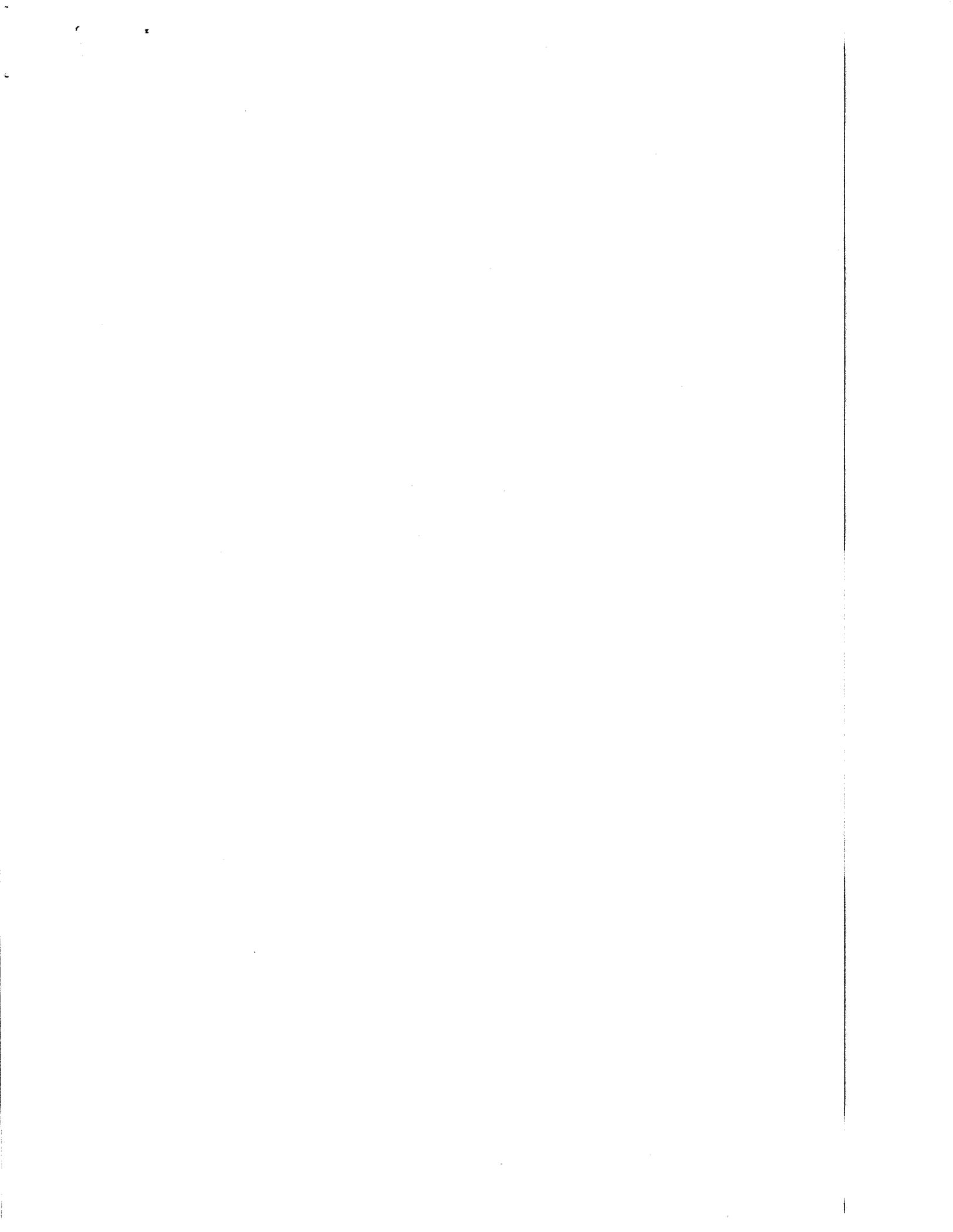
After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The 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 another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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)(ii). Copies of the Commissioner's Summary Order and Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. David Wexler, M.D, the Respondent, was authorized to practice medicine in New York State on September 6, 1973, by the issuance of license number 117973 by the New York State Education Department (Petitioner's Ex. 4).

2. On March 16, 2006, in the United States District Court, Southern District of New York, the Respondent was found guilty of the following:

- one count of Conspiracy to Distribute and Possess with Intent to Distribute a Controlled Substance, Which Resulted in Death (21 USC Section 846),
- eight counts of Distribute and Possess with Intent to Distribute a Controlled Substance (21 USC Sections 812, 841[a][1], 841[b][1], 841[b][2] and 18 USC Section 2),
- two counts of Conspiracy to Make False Statements and to Commit Health Care Fraud (18 USC Section 371), and
- six counts of Health Care Fraud (18 USC Sections 1347 and 2).

The Respondent was sentenced to twenty years imprisonment followed by five years of supervised release, an assessment of \$1,700.00 and \$887,812.00 restitution. (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

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

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing. He submitted no written material for the consideration of the Hearing Committee, nor did he request an adjournment of the hearing. The Administrative Law Judge ruled that the Petitioner had satisfied the requirements of law regarding the service on the Respondent of the Commissioner's Summary Order and Notice of Hearing and the Statement of Charges, and that, therefore, the hearing could proceed on the merits despite the absence of the Respondent.

The record in this case indicates that the Respondent was convicted on seventeen felony counts of an indictment. The Respondent illegally distributed controlled

substances, specifically Xanax, Dilaudid, Vicodin and Percocet, in large quantities. He also was guilty of such extensive health care billing fraud that the restitution required of him totaled \$887,812.00.

Since the Respondent was not present at the hearing and submitted no written materials for inclusion in the hearing record, there is no evidence of remorse, rehabilitation or mitigating circumstances for the Hearing Committee to consider. The crimes committed by the Respondent are both numerous and serious. The only penalty that can be imposed on the Respondent that is grave enough to match his criminal conduct is the revocation of his license to practice medicine.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Massapequa, New York
5 July, 2006


Patrick F. Carone, M.D., M.P.H.
Chairperson

Trevor A. Litchmore, M.D.
Virginia R. Marty, M.D.

APPENDIX 1

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

EXHIBIT

EV 6/21/06 JW

IN THE MATTER
OF
DAVID WEXLER, M.D.
CO-05-02-1055-A

COMMISSIONER'S
SUMMARY
ORDER AND
NOTICE OF
HEARING

TO: DAVID WEXLER, M.D.
Inmate No. 55248-054
MDC Brooklyn
Metropolitan Detention Center
P.O.Box 329002
Brooklyn, NY 11232

DAVID WEXLER, M.D.
5 East 76 Street
New York, NY 10021

The undersigned, Dennis P. Whalen, Executive Deputy Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached, hereto, and made a part hereof, has determined that **DAVID WEXLER, M.D.**, Respondent, licensed to practice medicine as a physician in New York state on September 6, 1973, by license number 117973, has been found guilty of committing acts constituting felonies under federal law, in the United State District Court, Southern District of New York.

It is therefore,

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, **DAVID WEXLER, M.D.**, Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine. This order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law § 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 21st day of June, 2006 at 10:00 am in the forenoon at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §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 hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180
ATTENTION: HON. SEAN D. O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION,
and by telephone (518-402-0748), upon notice to the attorney for the Department of

date. Claims of court engagement will require detailed affidavits of actual engagement.
Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED, AND/OR THAT
YOU BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE
URGED TO OBTAIN AN ATTORNEY FOR THIS
MATTER.**

DATED: Albany, New York

MAY 8, 2006



DENNIS P. WHALEN
Executive Deputy Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
DAVID WEXLER, M.D.
CO-05-02-1055-A

STATEMENT
OF
CHARGES

DAVID WEXLER, M.D., Respondent, was authorized to practice medicine as a Physician in New York state on September 6, 1973, by the issuance of license number 117973 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 16, 2006, in the United States District Court, Southern District of New York, Respondent was found guilty, of Count 1: 21 U.S.C. §846, Conspiracy to Distribute and Possess with Intent to Distribute, Which Resulted in Death; Count 2: 21 U.S.C. 812, 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. 2, Distribute and Possess with Intent to Distribute a Controlled Substance; Count 3: 21 U.S.C. 812, 841(a)(1) and 841(b)(2), and 18 U.S.C. 2, Distribute and Possess with Intent to Distribute a Controlled Substance (Xanax); Count 4: 21 U.S.C. 812, 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. 2, Distribute and Possess with Intent to Distribute a Controlled Substance (Dilaudid); Count 5: 21 U.S.C. 812, 841(a)(1), and 841(b)(1)(D), Distribute and Possess with Intent to Distribute a Controlled Substance (Vicodin); Count 6: 21 U.S.C. 812, 841(a)(1), and 841(b)(1)(D) Distribute and Possess with Intent to Distribute a Controlled Substance (Vicodin); Count 7: 21 U.S.C. 812, 841(a)(1), and 841(b)(1)(C), and 18 U.S.C. 2, Distribute and Possess with Intent to Distribute a Controlled Substance (Percocet); Count 8: 21 U.S.C. 812, 841(a)(1), and 841(b)(1)(C), and 18 U.S.C. 2, Distribute and Possess with Intent to Distribute and Controlled Substance (Dilaudid); Count 9: 21 U.S.C. 812, 841(a)(1), and 841(b)(1)(C), and 18 U.S.C. 2, Distribute and Possess with Intent to Distribute a Controlled Substance (Dilaudid); Count 10: 18 U.S.C. 371, Conspiracy to Make False Statements and To Commit Health Care Fraud; Count 11: 18 U.S.C. §§1347 and 2, Health Care Fraud; Count 12: 18 U.S.C. 371, Conspiracy to Make False Statements and To Commit Health Care Fraud; Count 13: 18 U.S.C. §§1347 and 2, Health Care Fraud; Count 14: 18 U.S.C. §§1347 and 2, Health Care Fraud; Count 15: 18 U.S.C. §§1347 and 2, Health Care Fraud; Count 16: U.S.C. §§1347 and 2, Health Care Fraud; Count 17: 18 U.S.C. §§1347 and 2,

Health Care Fraud; and was sentenced to twenty (20) years imprisonment on Counts 1, 2, 4, 7, 8, and 9; three (3) years imprisonment on Count 3; five (5) years imprisonment on Counts 5, 6, 10, and 12; ten (10) years imprisonment on Counts 11 and 13-17, all to run concurrently, upon release from imprisonment, Respondent shall be on supervised release for a term of five (5) years on Count 1; three (3) years on Counts 2, 4, 7, 8, and 9; three (3) years on Counts 3, 5, 6, and 10-17, all to run concurrently, and to pay a \$1,700.00 Assessment and \$887,812.00 Restitution.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: *May 8*, 2006
Albany, New York

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

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding. Pursuant to Public Health Law §230, the Notice of Hearing must, additionally, specify that the licensee shall file a written answer.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer or Responsive Pleading. A party may serve an answer or response to the allegations of the Department. In matters governed by PHL §230, the licensee is required to file a written answer to each of the charges and allegations of the Department. Under the law, any charge or allegation which is not so answered shall be deemed admitted.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, document or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as is practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any

time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public Health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of the claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer or Hearing Committee Report. The report or determination should be submitted within 60 days of completion of the hearing.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order any party may submit exceptions to said report and proposed order.

to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed. Pursuant to PHL 230(c), a notice of request for review of the Hearing Committee determination must be served upon the ARB within 14 days of service of the determination. All parties have 30 days thereafter to submit briefs and 7 days from service of a brief to submit a reply.

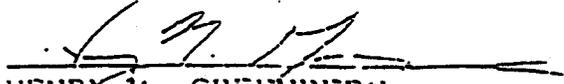
51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

~~51.16 Establishment, Construction, Rate Hearings.~~ Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public Health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York
March 10, 1997


HENRY M. GREENBERG
General Counsel