



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*

December 5, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Elliot M. Heller, M.D.  
1 Stockton Court  
East Brunswick, New Jersey 08816

Robert Bogan, Esq.  
Paul Robert Maher, Esq.  
NYS Department of Health  
433 River Street  
Hedley Bldg Annex  
Troy, New York 12180

**RE: In the Matter of Elliot M. Heller, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-337) 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.

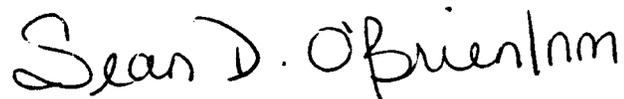
The notice of review served on the Administrative Review Board should be forwarded to:

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 "Sean D. O'Brien/nm". The signature is written in a cursive style.

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:nm  
Enclosure

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

**COPY**

IN THE MATTER  
OF  
**ELLIOT M. HELLER, M.D.**

DETERMINATION  
AND  
ORDER

BPMC-03-337

A Notice of Referral Proceeding dated September 8, 2003 and a subsequent superceding Commissioner's Order and Notice of Referral Proceeding dated October 15, 2003, and Statements of Charges dated September 8, 2003, were served upon the Respondent, **ELLIOT M. HELLER, M.D.**; **JOEL H. PAULL, D.D.S., M.D.**, Chairperson, **RICHARD F. KASULKE, M.D.** and **NANCY J. MACINTYRE, R.N., 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on November 19, 2003, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person.

Evidence was received and transcripts of these proceedings were made.

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

## STATEMENT OF CASE

This case was brought pursuant to Public Health Law Sections 230(12)(b) and 230(10)(p). Section 230(12)(b) of the statute provides that when a licensee has been convicted of a felony, the Commissioner of Health may issue an order requiring the licensee to refrain from practicing medicine until a hearing can be held to determine what action should be taken with regard to the conviction.

Section 230(10)(p) provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(iii) (erroneously referred to in the charges as section 6530(9)(iii)), which covers conviction of a crime in another jurisdiction which would, if committed in New York State, constitute a crime in this state. A copy of the Commissioner's Notice and Notice of Referral Proceeding, and a copy of the Statement of Charges, are attached to this Determination and Order as Appendix 1.

## WITNESSES

For the Petitioner:

None

For the Respondent:

Elliot M. Heller, M.D.  
Michael Leibowitz, M.D.  
Milton Heumann, Ph.D.  
Andrew J. Miller, M.D.

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". 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. **ELLIOT M. HELLER, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 2, 1984, by the issuance of license number 158614 by the New York State Education Department (Ex.'s 8 and 1).
2. On September 26, 2002, by entry of a plea of guilty, Respondent was convicted of the crime of Theft by Deception, 2<sup>nd</sup> degré (a felony) by the New Jersey Superior Court, Law Division - Criminal. The indictment that led to the conviction alleged that Respondent, doing business as "ENT", had purposely obtained or attempted to obtain funds in excess of \$75,000 from various insurance companies by submitting bills for procedures not actually performed. As a result of the conviction, Respondent was sentenced to 3 years' imprisonment, to pay restitution, and to pay fines and assessments totaling \$155.00 (Ex. 9).

## HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in Respondent's New Jersey felony conviction constitutes misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(iii), because the conduct would have constituted a crime had it been committed in New York State (grand larceny in the second

degree; Penal Law §155.40). Since the crime of which Respondent was convicted constituted a felony under New Jersey law, and would also have constituted a felony under New York law, had it been committed here, the Commissioner's Order and suspension were properly issued, pending this hearing on the final penalty to be imposed (Public Health Law §230(12)(b)).

### **VOTE OF THE HEARING COMMITTEE**

#### **SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by having been convicted of a crime in another jurisdiction which would also have constituted a crime under the laws of New York State, had it been committed here.

**VOTE: SUSTAINED (3-0)**

### **HEARING COMMITTEE DETERMINATION**

Inasmuch as professional misconduct has been established, the only issue remaining to be decided pursuant to Public Health Law 230(10)(p) is the penalty to be imposed.

The commission by a physician of a felony related to insurance fraud is a serious matter involving not only violation of the criminal laws, but also of ethics. Such violations strike at the heart of the integrity of the medical care system.

The Hearing Committee concludes that the penalty imposed herein should serve as punishment, as well as a deterrent to other physicians, and to prevent future misconduct of the same sort by this Respondent. The Hearing Committee concludes, however, after careful consideration of all the evidence on the subject, and of the full range of penalties

available under Public Health Law §230-a, that the license revocation proposed by the Department is not necessary to meet these objectives, nor is it appropriate, given the evidence presented by Respondent.

It is the feeling of the Hearing Committee, first of all, that Respondent has received heavy punishment already for the acts leading to the conviction. In addition to the sentence of incarceration (of which Respondent served 3 months actual prison time, along with an extended period of post-incarceration supervision), Respondent has paid \$321,000 in restitution, has suffered the stigma of being branded a convicted felon, has been compelled to surrender his medical license in New Jersey (at least for the time being), has had to give up a significant medical practice there, has had his New York license suspended, and has significantly depleted his financial resources defending himself against the criminal action and providing for his family (Respondent's testimony).

Furthermore, it is apparent from Respondent's testimony and the attestations of individuals who wrote letters of support for him (see Ex. A), that Respondent is extremely remorseful regarding his conduct and highly motivated to avoid future criminal behavior. Respondent testified credibly that his arrest and conviction have caused himself and his family considerable pain and embarrassment, and that his medical career in New Jersey has essentially been ruined.

Respondent presented in evidence numerous letters from patients, physician colleagues, work related acquaintances, friends, fellow synagogue members and family members, as well as the testimony of Milton Heumann, Ph.D. and Andrew Miller, M.D., attesting to his skill and medical expertise, his pro bono care for indigent patients, his compassion and devotion to his patients, his willingness to give of his own time after hours to assist persons in need of emergency care, and his charitable work. The Hearing

Committee is of the opinion that Respondent has considerable capabilities to offer to a patient population and community if allowed to practice in an appropriate setting. The loss of his ability to practice medicine should be avoided by careful structuring of the penalty in this case.

Under the circumstances, the Hearing Committee is inclined to believe that Respondent should be given a second chance to practice, but under circumstances that will consider his past history and protect the residents of New York State. Accordingly, the Hearing Committee concludes that, in addition to the license suspension imposed pursuant to the Commissioner's Order, which will lapse upon issuance of this decision, Respondent's license should be placed on probation for a period of five years, with significant limitations on the type practice he may engage in during this period.

The details of this probation will be set forth in the attached order, and include requirements that he practice only as an employee of a medical facility, clinic or private practice where he will not be responsible for direct billing for the services he provides, and that he practice only in a setting where patients are underserved by medical practitioners. The Hearing Committee determined that these requirements hopefully will ensure that there will be no repetition of behavior of the type that led to the criminal conviction, as set forth in the following paragraphs.

Although Respondent appears, as noted above, to be highly motivated to avoid future billing irregularities, the Hearing Committee was concerned by some of the evidence relating to factors that could play a role in Respondent's future conduct. Specifically, Respondent confirmed that prior to the period involving the criminal action, he was suffering from a serious anxiety condition for which he was prescribed medication (Zoloft), but that

he unilaterally discontinued his medical supervision in late 1995 and began to self-prescribe Zoloft.

According to Dr. Michael R. Leibowitz, the Respondent's treating psychiatrist, Respondent, related to his unsupervised use of Zoloft, began to exhibit hypomanic behavior, characterized by a reduced sleep, increased activity level, and impaired judgement, but also with a dangerous lack of appreciation of the risks of his behavior. It was Dr. Leibowitz's opinion that Respondent's criminal behavior was related to this unsupervised Zoloft use and associated hypomania (Ex. A, sub-exhibit E, letter of Dr. Leibowitz; and Dr. Leibowitz's testimony).

This evidence does not excuse Respondent's criminal conduct, but does raise a question as to whether Respondent's apparently high motivation to avoid future misconduct is a sufficient guarantee in and of itself that such behavior would not recur. Dr. Leibowitz stated in his October 14, 2002 letter (in Ex. A, sub-exhibit E) that Respondent's panic disorder had, as of that time, resurfaced, and that he experienced panic symptoms such as rapid heart beat, feeling faint and dizzy, chest pain and sweating. He also reported that Respondent had developed other medical conditions that require monitoring, including prostate problems, diabetes and colitis.

Since Respondent still has the underlying anxiety condition, albeit apparently controlled currently, as well as other health problems, and increased financial strain to potentially exacerbate his anxiety, the Hearing Committee is concerned that, despite Respondent's best intentions, the possibility of a recurrence of misconduct persists. The Hearing Committee, therefore, concludes that the probationary restrictions on Respondent's practice described above and in the attached order will serve to protect against that possibility.

These restrictions will remove from Respondent's sphere of responsibilities not only the billing process itself, but the responsibility for paying for the services of employees and associates (cited by Respondent and Dr. Leibowitz as a factor in the overbillings). It will also compel him to work in a setting where his superiors will be able to detect any abnormal changes in his behavior. The Hearing Committee hopes that these restrictions will help to keep the level of pressure on Respondent lower, thereby helping to keep his anxiety under control.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. The New York Medical license of **ELLIOT M. HELLER, M.D.** is hereby placed on **PROBATION** for a period of **FIVE (5) YEARS**. The terms of probation are set forth below:

- A). If, during the period of his probation, the Respondent chooses to resume practice in New York, he must provide thirty (30) days prior written notice concerning his intention, by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions against him by any local, state or federal agency, institution or facility to which Respondent has been subjected at any time.
- B). Respondent shall practice only as an employee of some other provider of medical care and services during the period of his probation, and shall not have any responsibility for the billings for his services. In addition, Respondent's employment shall be limited to a clientele or geographic location underserved by the medical community at large. Respondent shall provide written verification of such employment to OPMC at the address set forth above.
- C). Respondent shall submit written descriptive notification to OPMC of any changes in employment and practice, professional and residential addresses or telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility during the probationary period, within 30 days of each event;
- D). If Respondent ceases to be engaged in, or intends to leave, the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, he shall notify the Director of OPMC at the address set forth above. The probation shall be tolled during any period when he is not practicing in New York and shall resume upon his return to practice in New York State.
- E). Respondent shall notify in writing any medical employer with whom he becomes affiliated or at which he practices during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.
- F). OPMC may, at its discretion, take any and all steps necessary to monitor

Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which he is affiliated or at which he practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired Respondents. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

- G). Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- H). Respondent shall comply with all terms, conditions, and restrictions to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance.
- I). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.

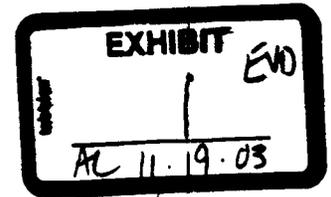
This ORDER shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Eggertsville, New York  
1 December 2003

  
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JOEL H. PAULL, D.D.S., M.D.  
Chairperson

RICHARD F. KASULKE, M.D.  
NANCY J. MACINTYRE, R.N., PH.D.

# APPENDIX 1



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IN THE MATTER

OF

ELLIOT M. HELLER, M.D.  
CO-03-02-0691-A

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NOTICE OF  
REFERRAL  
PROCEEDING

TO: ELLIOT M. HELLER, M.D.  
1 Stockton Court  
East Brunswick, NJ 08816

**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 23<sup>rd</sup> day of October 2003, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter

"Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 13, 2003.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before October 13, 2003, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.**

DATED: Albany, New York

*September 8*, 2003



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

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

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER  
OF  
ELLIOT M. HELLER, M.D.  
CO-03-02-0691-A

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STATEMENT  
OF  
CHARGES

ELLIOT M. HELLER, M.D., the Respondent, was authorized to practice medicine in New York state on July 2, 1984, by the issuance of license number 158614 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A.

 on or about September 26, 2002, in the New Jersey Superior Court, Law Division - Criminal, New Jersey, Respondent was found guilty, based on a plea of guilty, of Theft by Deception - in Second Degree, in violation of N.J.S.A. 2C:20-4, and on or about December 18, 2002, was sentenced to three (3) years in jail, ordered to make restitution (previously paid), and to pay \$155.00 in fines and assessments.

**SPECIFICATION**

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

1. The facts in Paragraph A.

DATED: *Sept 8*, 2003  
Albany, New York

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