



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

June 1, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ann Gayle, Esq.
NYS Department of Health
Metropolitan Office
5 Penn Plaza - 6th Floor
New York, New York 10001

Harry Lewis Sernaker, M.D.
12 Ivy Hill Court
Cockeysville, Maryland 21030

RE: In the Matter of Harry Lewis Sernaker, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-115) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

IN THE MATTER

-OF-

HARRY LEWIS SERNAKER, M.D.

Respondent

DETERMINATION

AND

ORDER

ORDER #99-115

A Notice of Referral Proceeding and Statement of Charges, dated February 12, 1999, were served upon the Respondent, Harry Lewis Sernaker, M.D. **RICHARD ASHLEY, M.D. (Chair), IRWIN COHEN, M.D. and DENNIS GARCIA** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Henry M. Greenberg, Esq., General Counsel, Ann Gayle, Esq., Associate Counsel. The Respondent appeared pro se. Evidence was received, statements were heard 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 Section 230(10)(p). This statute provides for an expedited proceeding 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 prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d) (disciplinary action taken against the license by another state). The charges herein arise from Respondent entering into a Consent Order with the Maryland State Board of Physician Quality Assurance (hereinafter the Maryland Board) pursuant to which the Respondent was suspended from the practice of medicine for one year, with six months stayed and was placed on 3 years probation. The Consent Order enumerated numerous acts, admitted to by the Respondent, wherein he failed to meet acceptable standards of care. The acts included failure to implement or pursue a coherent and appropriate patient management plan, undertaking an excessive number of pain management procedures, treatment which resulted in an excessive complication rate for spinal cord stimulation systems and drug pump infusion systems, failure to appropriately manage infectious processes and complications associated with invasive pain management systems and the inappropriate re-implantation of a pain management device. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to and made a part of this Determination and Order as Appendix One.

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 exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Harry Lawrence Semaker, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on or about January 25, 1980, by the issuance of license number 141110 by the New York State Education Department. (Pet. Ex. 2).

2. On or about September 2, 1998, the Maryland Board issued a Consent Order which suspended the Respondent from the practice of medicine in Maryland for one year with six months suspended and placed his license on probation for 3 years.

3. The findings of the Maryland Board which the Respondent admitted to and which led to the issuance of the Consent Order included failing to implement or pursue a coherent and appropriate patient management plan, undertaking an excessive number of pain management procedures, treatment which resulted in an excessive complication rate for spinal cord stimulation systems and drug pump infusion systems, failure to appropriately manage infectious processes and complications associated with invasive pain management systems, failing to appropriately evaluate patients to explore psychogenic components of symptoms prior use of invasive surgical procedures, inappropriately re-implanting a pain management device, failure to address the removal of said pain management device when complications developed, failure to adequately assess the use

of injected narcotic analgesics prior to the use of drug pump infusion systems and failure to appropriately administer narcotic analgesics via implantable drug delivery systems. (Pet. Exs. 1 and 4)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent had disciplinary action taken or had his application for a license refused by a professional disciplinary agency of another state. The underlying conduct which was the basis for the action by the State Board would constitute professional misconduct in New York. Specifically, the Committee found the Respondent's actions would fall within the definitions of misconduct set forth at Section 6530(3) (Practicing the profession with negligence on more than one occasion)

DETERMINATION AS TO PENALTY

The Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be **revoked**. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee views the conduct which resulted in the Maryland Consent Order to be extremely serious. The Respondent's actions demonstrated extremely poor medical judgment which clearly constituted negligent conduct on more than one occasion and put his patients in danger.

The Committee did not find credible the Respondent's testimony that he has strong ties to New York. Nor did the Respondent present any mitigating evidence regarding his actions upon which the Maryland Consent Order was based.

The Committee has a duty to protect the public in New York. The Committee felt that only revocation would adequately do so.

ORDER

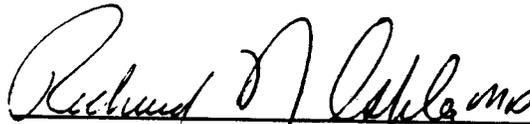
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) are **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: New York, New York

26 May, 1999



**RICHARD ASHLEY, M.D. (Chair)
IRWIN COHEN, M.D.
DENNIS GARCIA**

TO: Ann Gayle, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Harry Lewis Sernaker, M.D.
12 Ivy Hill Court
Cockeysville, MD 21030

APPENDIX I

IN THE MATTER
OF
HARRY LEWIS SERNAKER, M.D.

STATEMENT
OF
CHARGES

HARRY LEWIS SERNAKER, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 25, 1980, by the issuance of license number 141110, by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 2, 1998, in a Consent Order, the State Board of Physician Quality Assurance of the State of Maryland ("Board") ordered that Respondent's license to practice medicine be suspended for one year (effective September 21, 1998), with all but the first six months stayed and the Board further ordered that after the conclusion of the active period of suspension Respondent be placed on probation for three years with the following conditions: Respondent, *inter alia*, was prohibited from surgically implanting, participating in, or otherwise undertaking the surgical implantation of any pain management devices, he was to enter into a consultation/supervisor relationship with a Board certified pain management physician regarding medical and surgical care in his pain management practice, enroll in and successfully complete a Board-approved courses in pain management and in the treatment of infections/infectious complications associated with surgical and/or pain management procedures, and undergo a peer review nine months after the conclusion of the active period of suspension.

Said Order was made pursuant to Respondent's admission to the Findings of Fact and Conclusions of Law in the Consent Order which were that he failed to meet appropriate standards for the delivery of quality medical and surgical care of seven of his patients in that he, *inter alia*, did not implement or pursue a coherent, appropriate management plan, undertook an excessive number of pain management procedures and revisions of such procedures, failed to meet appropriate standards of care for spinal cord stimulation systems and drug pump infusion systems and for managing infectious processes and complications, failed to appropriately evaluate patients prior to pursuing invasive surgical procedures, and undertook extensive pain management procedures in the absence of clear indications for such procedures, all in violation of the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §14-404(a)(22).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1999) by 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 (namely N.Y.

Educ. Law §6530(3)) as alleged in the facts of the following:

1. Paragraph A.

DATED: February 12, 1999
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct