



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Office of Public Health

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

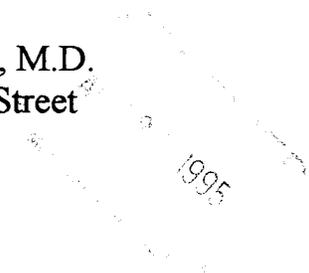
Karen Schimke  
*Executive Deputy Commissioner*

August 17, 1995

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph Huberty, Esq.  
NYS Department of Health  
Corning Tower-Room 2438  
Empire State Plaza  
Albany, New York 12237

Luther Lee Emerson, M.D.  
2201 S. W. Holden Street  
Seattle, WA 98106



### **RE: In the Matter of Luther Lee Emerson, M.D.**

Effective Date: 08/24/95

Dear Mr. Huberty and Dr. Emerson:

Enclosed please find the Determination and Order (No. 95-181) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
Albany, New York 12237

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 all action 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  
Empire State Plaza  
Corning Tower, Room 2503  
Albany, New York 12237-0030

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, sweeping initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

IN THE MATTER  
-OF-  
LUTHER LEE EMERSON, M.D.

Respondent

DECISION  
AND  
ORDER  
OF THE  
HEARING  
COMMITTEE

BPMC ORDER NO. 95- 181

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated May 8, 1995 which were served upon **LUTHER LEE EMERSON, M.D.**, (hereinafter referred to as "Respondent"). **JOSEPH G. CHANATRY, M.D.**, Chairperson, **PAUL M. DeLUCA, M.D.**, and **SISTER MARY T. MURPHY**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on June 28, 1995 at the, Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "the State" or "Petitioner") appeared by **JEROME JASINSKI, ESQ.**, Acting General Counsel, **JOSEPH HUBERTY, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct, of counsel. Respondent appeared *pro se*. Evidence was received. Respondent testified under oath. Legal arguments were heard. A transcript of these proceedings was made. The parties submitted written closing arguments.

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

## STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute 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 prior professional disciplinary action or criminal conviction. The scope of this 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) [Having been found guilty of improper practice or professional misconduct by another state disciplinary agency] and Education Law Section 6530 (9)(d) [disciplinary action taken by the authorized disciplinary agency of another state, where the conduct from which the action in the other state arises would amount to misconduct in this state]. The charge herein arises from suspension of Respondents license to practice medicine by the Vermont State Board of Medical Practice. The Vermont Board found Respondent guilty, after a hearing, of financial exploitation of patients, willfully making and filing a false report or record, gross failure to practice within accepted standards of medicine, and repeated failures to practice within accepted standards of medicine. The allegations in this proceeding and the underlying decision by the Vermont authorities are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

## FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

## CONCLUSIONS

Respondent testified in his own behalf. The Committee was favorably impressed with Respondent. The Committee finds that a lack of experience plus isolation from other physicians resulting from his rural Vermont location and lack of hospital privileges, contributed to the acts found offensive by the Vermont authorities. The Committee concludes Respondent's actions were not venial in nature. The Committee believes that Respondent meant no harm. The Committee accepts Respondent's assertion that he considered his work beneficial in that he was attempting to cure addicts of their addictions. As Respondent points out in his written statement (exhibit A),

[T]he Vermont Board acknowledged that there was a humanitarian purpose to the methadone treatments; unfortunately it was a misguided undertaking. The people whom I treated [approximately eighteen heroin addicts] were heroin users who were seeking withdrawal from heroin[....] [T]he methadone treatment itself was and is legitimate medical treatment; the illegal aspect was not having the proper license[....]

The Committee was also impressed that Respondent was performing work in nursing homes, essentially on a *pro bono* basis. This is work that other physicians in the area are not willing to do and makes Respondent an essential part of the medical community. In sum, the Committee believes that Respondent has paid his debt to society and is attempting to bring his life back to order. The Committee finds that the six months of actual suspension plus three years of probation imposed by Vermont is a penalty commensurate with Respondent's misdeeds. The Committee sees no reason to be more stringent with Respondent than the state in which the acts occurred. Therefore, the Committee will impose probation according to the guidelines set forth in the Order which follows.

## ORDER

WHEREFORE, Based upon the forgoing facts and conclusions,

IT IS HEREBY ORDERED THAT:

1. The Factual allegations in the Statement of Charges are SUSTAINED.

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. Should Respondent wish to re-activate his license to practice medicine in this state he shall fulfill the following conditions:

a. Respondent shall fulfill all the requirements of any probation or other penalty imposed by any other state including but not limited to the state of Vermont

b. Should Respondent seek to actively practice medicine in New York, prior to the year 2000, he shall be subject to probation until the year 2000 or for a period of not less than 2 years, whichever is *LONGER* on the following terms:

i. Respondent shall, at his own expense, obtain a practice monitor. The said practice monitor shall be approved by the Director of the Office of Professional Medical Conduct or his or her designee (hereinafter collectively referred to as "the Director"). The said practice monitor shall randomly select and review a sufficient number of patient files from Respondent's office and at each of the institutions where Respondent practices to ensure familiarity with the quality of Respondent's practice. Furthermore, the said practice monitor shall be present with Respondent during treatment and other practice activities such that the practice monitor is familiar with the quality of Respondent's work. The said practice monitor shall report to the Director at least quarterly with regard to the quality of Respondent's work. The said practice monitor shall immediately report to the Director any deviation from accepted standards of medical care.

4. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order  
by Certified Mail.

**Dated:**  
**Utica, New York**

August 15, 1995

*Joseph G. Chanatry, M.D.*  
**JOSEPH G. CHANATRY, M.D., Chairperson**

**PAUL M. DeLUCA, M.D.**  
**SISTER MARY T. MURPHY**

**TO: JOSEPH HUBERTY, ESQ.**  
Assistant Counsel  
Bureau of Professional Medical Conduct  
New York State Department of Health  
Corning Tower Building  
Empire State Plaza  
Albany, N.Y. 12237

**LUTHER LEE EMERSON, M.D.**  
2201 S. W. Holden St.  
Seattle, WA 98106

NEW YORK STATE DEPARTMENT OF HEALTH

APPENDIX ONE

PETITIONER'S  
EXHIBIT  
10 FOR ~~FI~~  
TMB 6/28/73

IN THE MATTER : AMENDED  
OF : STATEMENT OF  
LUTHER LEE EMERSON, M.D. : CHARGES  
-----X

LUTHER LEE EMERSON, M.D., the Respondent, was authorized to practice medicine in New York State on February 20, 1973 by the issuance of license number 115535 by the New York State Education Department. Respondent is not currently registered with the New York state Education Department to practice medicine in New York State. Respondent's address as shown on Respondent's last registration with the New York State Education Department is 692 Morris Street, Albany, New York 12208

FACTUAL ALLEGATIONS

A. By Second Amended Specification of Charges dated September 16, 1991 the Vermont State Board of Medical Practice (hereinafter Vermont State Board) charged Respondent, inter alia, with violations of VSA 1354(6), promotion by a physician of the sale of drugs, devices, appliances or goods provided for a patient in such a manner as to exploit the patient for financial gain of the physician or selling, prescribing, giving away or administering drugs for other than legal and legitimate purposes;

PET. EX.  
II

NEW YORK STATE DEPARTMENT OF HEALTH

VSA 1354(8), willfully making and filing false reports or records in his practice as a physician; VSA 1354(18), consistent improper utilization of services; and VSA 1354(22), in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions, that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions.

B. By Hearing Officers Report dated December 9, 1991

Respondent was found guilty of:

- 1) Eighteen (18) violations of VSA 1354(6) in that he had sold, prescribed, given away or administered drugs for other than legal and legitimate therapeutic purposes to eighteen (18) different patients;
- 2) One (1) violation of VSA 1354(8) in that in the course of his practice he had willfully and knowingly filed a false report by having completed and signed an Interstate Commerce Commission Drivers License form indicating a patient was physically fit, healthy and free of drugs when at the same time Respondent was prescribing an addictive drug (methadone) for the same patient;
- 3) Eighteen (18) violations of VSA(18) in that by selling, prescribing, giving away or administering

drugs for other than legal and legitimate purposes to eighteen (18) different patients Respondent had consistently engaged in improper utilization of services;

- 4) Twenty (20) violations of VSA 1354(22) in that in the course of his practice Respondent had failed to use or exercise on repeated occasions that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions.

C. By order dated September 2, 1992 all of the foregoing Findings of Fact and Conclusions of Law of the appointed Hearing Officer were adopted by the Vermont State Board of Medical Practice.

D. By Findings of Fact and Conclusions of Law Regarding Disposition and Final Order dated December 2, 1992 the Vermont State Board of Medical Practice adopted the Findings of Fact and Conclusions of Law contained in the hearing officer's report dated September 2, 1992, suspended Respondent's license to practice medicine in the State of Vermont for a period of three years, all stayed but for a period of six months, and placed Respondent on probation for the entire three year period of suspension. In addition, Respondent was required to permit the Board to monitor Respondent's practice for over-prescribing by requiring Respondent to file duplicate prescriptions for

controlled substances with the Board; attend a mini-residency in the proper prescribing of controlled substances; attend a focused Continuing Medical Education course in internal medicine and, during the period of probation, make his patient medical records available to a Board selected specialist for off-site review.

E. By order of the of the Appellate Hearing Officer dated August 10, 1993, entered August 11, 1993, of the twenty (20) violations of VSA 1354(22) found by the Hearing Officer and adopted by the Vermont State Board eighteen (18) of such Findings were remanded to the Board for further Findings of Fact.

F. After making further Findings of Fact, by Additional Findings of Fact and Conclusions of Law and Order dated December 6, 1993 the Vermont State Board restated and confirmed the eighteen (18) violations of VSA 1354(22) for which remand had been directed and no appeal was taken therefrom.

G. By the above stated Additional Findings of Fact and Conclusions of Law and Order dated December 6, 1993 the Vermont State Board disciplined Respondent by suspending Respondent's license to practice medicine in the State of Vermont for a period of three years, staying the aforesaid license suspension for all but six months thereof and placing Respondent on probation for the entire three year period of license suspension. As stated above, no appeal was taken from any part of this Order.

H. In addition to the foregoing, during the period of probation Respondent's license to practice medicine in the State of Vermont was conditioned upon his allowing the Board to monitor

Respondent's practice for over-prescribing, requiring that Respondent file duplicate prescriptions with the Board for all Schedule II through Schedule IV controlled drugs; compelling Respondent to attend a continuing medical education program in internal medicine and requiring that Respondent make his medical records available for off-site review by a specialist selected by the Board.

I. The selling, prescribing, giving away or administration of drugs (controlled substances) for other than legal and legitimate therapeutic purposes, if committed in New York State, would constitute the fraudulent practice of medicine or practice beyond its authorized scope pursuant to the provisions of New York Education Law Sec. 6530(2) (McKinney Supp 1995).

J. The willful filing of a false report by a physician in New York State constitutes a violation of New York Education Law Sec. 6530(21) (McKinney Supp 1995).

K. The selling, prescribing, giving away or administration of drugs for other than therapeutic purposes for eighteen (18) different patients, if committed in New York State, would constitute practicing the profession with negligence on more than one occasion, a violation of New York Education Law Sec. 6530(3) (McKinney Supp 1995).

L. Failure to use or exercise on repeated occasions that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions, if

committed in New York State would also constitute practicing the profession with negligence on more than one occasion, a violation of New York State Education Law Sec. 6530(3) (McKinney Supp 1995).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF IMPROPER  
PRACTICE OR PROFESSIONAL MISCONDUCT BY  
ANOTHER STATE DISCIPLINARY AGENCY

Petitioner charges Respondent with 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 pursuant to the provisions of N.Y. Educ. Law Sec. 6530(9)(b) (McKinney Supp. 1995) in that petitioner charges:

1) The facts in paragraphs A, B, B.1, B.2, B.3, B.4, C, D, E, F, G, H, I, J, K and/or L.

SECOND SPECIFICATION

HAVING DISCIPLINARY ACTION TAKEN AGAINST HIM BY  
A DULY AUTHORIZED DISCIPLINARY AGENCY OF ANOTHER STATE

Petitioner charges Respondent with having his license to practice to practice medicine revoked, suspended or having other professional disciplinary action taken by a duly authorized

disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State pursuant to N.Y. Educ. Law 6530 (9) (d) (McKinney Supp 1995), in that Petitioner charges:

2) The facts in paragraphs A, B, B.1, B.2, B.3, B.4, C, D, E, F, G, H, I, J, K and/or L.

Dated: Albany, New York

May 25 1995

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