



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

July 9, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Barry C. Plunkett, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Deborah K. Duello, M.D.  
884 State Route B1  
Massena, New York 13662

Deborah K. Duello, M.D.  
12 Center Street  
P.O. Box 11  
Massena, New York 13662

**RE: In the Matter of Deborah Kay Duello, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-218) 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,



Tyone T. Butler, Director  
Bureau of Adjudication

TTB:  
Enclosure

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

IN THE MATTER  
OF  
**DEBORAH KAY DUELLO, M.D.**

DETERMINATION

AND

ORDER

BPMC 02-218

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated May 17, 2002, were served upon the Respondent, **DEBORAH KAY DUELLO, M.D.**. **MR. IRVING CAPLAN**, Chairperson, **AIRLIE CAMERON, M.D., M.P.H.** and **JOSEPH A. MESSINA, M.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 June 20, 2002, 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 **BARRY C. PLUNKETT, ESQ.**, and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent **DEBORAH KAY DUELLO, M.D.** appeared pro se.

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 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 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 Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (2), (3), (4), (6), (20), (21), (24) and (32). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

### WITNESSES

For the Petitioner:	None
For the Respondent:	Respondent

### 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 unless otherwise specified.

1. **DEBORAH KAY DUELLO, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 25, 1999, by the issuance of license number 216127 by the New York State Education Department (Ex. 3). Respondent currently practices obstetrics and gynecology in New York State. At the time of the conduct at issue in this case, Respondent practiced in Missouri.
2. On March 23, 2001, the Missouri Administrative Hearing Commission ("the Commission") issued Findings of Fact and Conclusions of Law (the Missouri "Findings") in a proceeding instituted against Respondent by the State Board of Registration for the Healing Arts ("the Missouri Board"). In the Findings, it was concluded that Respondent had committed a number of violations of State and Federal law as a result of her prescribing of the drug **Stadol** (a powerful synthetic opioid that became a controlled substance effective October 31, 1997) to her office manager, B.H., who was also Respondent's domestic partner, after obtaining knowledge that B.H. was addicted to the drug, and of Respondent's allowing the business relationship with B.H. to continue after knowing of B.H.'s addiction, which allowed B.H. to illicitly obtain additional quantities of **Stadol**<sup>1</sup> (Ex. 4). As a result of these findings, The Missouri Board put Respondent on

<sup>1</sup> The findings of the Commission included unprofessional conduct; ordering of controlled substances for other than a medically accepted purpose and not in the course of her professional practice; incompetence by lack of disposition to use a professional ability; gross negligence and repeated negligence; violations of Federal and State regulations requiring prescriptions for controlled substances to be in good faith and in the course of

probation for three years, with requirements that she obtain specified Continuing Medical Education in medical ethics and prescribing of medications ("the Missouri Order", Ex. 5).

### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the Missouri Commission's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(2) (practicing the profession beyond its authorized scope);
- New York Education Law §6530(3) (negligence on more than one occasion);
- New York Education Law §6530(4) (gross negligence);
- New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of state or federal law governing the practice of medicine); and
- New York Education Law §6530(24) (practicing beyond the scope permitted by law);

The Hearing Committee found no support in the findings in the Missouri Order for citations of misconduct herein under New York Education Law §6530(20) (moral unfitness), New York Education Law §6530(21) (making or filing a false report), or New York Education Law §6530(32) (inadequate record keeping);

professional practice only; and violations of Federal regulations prohibiting the prescription of controlled substances (as opposed to dispensing them) to an addict for detoxification purposes.

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by 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.

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

#### **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by 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)**

### **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that Respondent was disciplined by the Missouri Board because of various findings of misconduct by her relating to the abuse of Stadol by her office manager and domestic partner, B.H.

Respondent admitted that the factual allegations set forth in the statement of charges were valid, and they are well established by the documentary evidence. The gist

of these findings was that Respondent prescribed Stadol on several occasions for B.H. for legitimate medical purposes, but that B.H. became addicted to Stadol; that B.H. engaged in a course of conduct of obtaining Stadol illegally, using Respondent's prescription blanks and by other means; that Respondent prescribed Stadol for B.H. after learning for certain that B.H. was addicted, to deal with problems related to B.H.'s addiction; and that Respondent took inadequate steps to keep B.H. away from the medical business, which facilitated B.H.'s efforts to obtain Stadol. Although apparently sympathetic with Respondent because of the difficult situation in which she found herself, the Missouri Commission and Board were critical of Respondent's handling of that situation.

The Hearing Committee concludes that the Missouri Order, which incorporates the Missouri Commission's Fact Findings and Conclusions of Law, constitutes evidence of professional misconduct in New York State because Respondent was found guilty of improper professional practices and was subjected to discipline by the Missouri Board (New York Education Law §6530(9)(b) and (d)), and because Respondent's conduct would have constituted misconduct had it been committed in this state, under a number of definitions of misconduct.

Specifically, the Board concluded that Respondent's prescriptions for Stadol written for B.H., after Respondent learned that B.H. was addicted, violated various provisions of State law and Federal regulations, and these findings are tantamount to findings of practicing the profession beyond its authorized scope and practicing beyond the scope permitted by law, as set forth in New York Education Law §6530 (2) and (24). In addition, the Board made specific findings of repeated negligence and gross negligence, and these are also misconduct in New York (New York Education Law §6530 (3) and (4)). Respondent's violations of Federal and State law with regard to the prescribing of

controlled substances also would have constituted misconduct in New York under New York Education Law §6530 (16).

The Hearing Committee concludes that the Missouri Order and Findings do not indicate that Respondent was found guilty of, or disciplined for, any conduct indicating moral unfitness, or filing a false report, or failure to maintain adequate records.

Inasmuch as Respondent committed professional misconduct as defined in New York law, the only issue remaining to be determined is the appropriate penalty to be imposed. The Hearing Committee concludes, after considering the entire spectrum of penalties available, as set forth in Public Health Law §230-a, that a period of probation is called for. The probation will end in 2 years, or upon completion of Respondent's Missouri probation, whichever is later. The Hearing Committee sees no indication that Respondent's practice of medicine presents any dangers to New York State residents, other than those springing from her relationship with B.H. and B.H.'s addiction problem, and this conclusion is consistent with the approach taken in Respondent's case by the State of Missouri. Respondent clearly recognizes the errors she has made in her handling of B.H.'s abuse of Stadol and evinces determination to avoid any recurrences of such problems.

However, Respondent still lives with B.H., and the terms of probation are intended to limit or eliminate the opportunities for B.H. to obtain controlled substances from Respondent or as a result of Respondent's actions or inactions.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. The medical license of **DEBORAH KAY DUELLO, M.D.** is hereby placed on **probation** for a period of **two (2) years**, or until she provides verification to New York State Office of Professional Medical Conduct ("OPMC") that she has been relieved of her Missouri probation, whichever occurs later. This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299.
2. The terms of Respondent's probation are as follows:
  - A). Respondent must, within thirty (30) days, if she has not already done so, provide OPMC at the address listed above with a full description of her current employment and practice, as well as a listing of professional and residential addresses and telephone numbers within or without New York State.
  - B). Respondent shall not provide any medical care to B.H. or prescribe any medications for her.
  - C). Respondent shall not employ B.H. to perform any functions relating to Respondent's practice of medicine or allow B.H. to have physical access to any locations at which Respondent practices, other than a waiting room or anteroom.
  - D). Respondent shall not possess prescription blanks anywhere B.H. might obtain access to them, including Respondent's home, car, or on her person.
  - E). Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by her profession. Respondent shall also maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
  - F). Respondent shall notify in writing any group, clinic or medical facility with whom she becomes affiliated or at which she practices during the effective

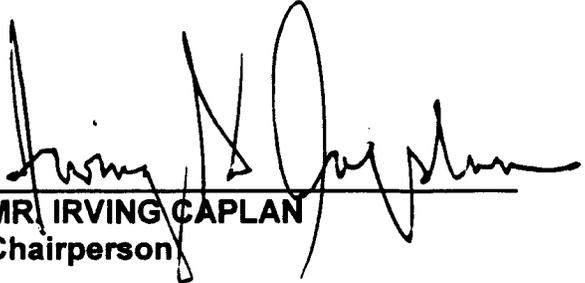
period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.

- G). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must provide, upon request, releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which she is affiliated or at which she 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 physicians. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of her 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.
- H). Respondent shall submit written descriptive notification to OPMC at the address listed above, 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;
- I). Respondent shall notify the Director of OPMC, in writing, if she 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. Respondent shall again notify the Director prior to any change in that status. Respondent's probation shall be tolled while Respondent is not practicing in New York State during such period and shall resume upon her return to practice in New York State.
- J). Respondent shall comply with all terms, conditions, and restrictions to which she is subject pursuant to the Order and shall assume and bear all costs related to compliance.
- K). 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.
- L). OPMC may, in its discretion, and upon request by Respondent, relieve her of any uncompleted term of her probation, or any individual provision(s) thereof,

if it is satisfied that such relief would not be contrary to the best interests of New York State residents.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: **Malone, New York**  
7-3, 2002



MR. IRVING CAPLAN  
Chairperson

AIRLIE CAMERON, M.D., M.P.H.  
JOSEPH A. MESSINA, M.D.

# APPENDIX 1

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

IN THE MATTER  
OF  
DEBORAH KAY DUELLO

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Deborah K. Duello, M.D.  
884 State Route B1  
Massena, NY 13662

Deborah K. Duello, M.D.  
12 Center Street  
P.O. Box 11  
Massena, NY

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 §§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 June, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 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.

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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: 518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. 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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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  
May, 17, 2002



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

Inquiries should be addressed to:

Barry C. Plunkett  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
Room 2512, Corning Tower  
Albany, New York 12237

IN THE MATTER  
OF  
DEBORAH KAY DUELLO, M.D.

STATEMENT  
OF  
CHARGES

Deborah K. Duello, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 25, 1999, by the issuance of license number 216127 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about June 1, 2001, the State Board of Registration for the Healing Arts, State of Missouri (hereafter "Missouri Board"), by a Findings of Facts, Conclusion of Law and Order (hereinafter "Missouri Order") placed Respondent's medical license on three (3) years probation, and required her within one (1) year, to complete at least 8 hours of continuing medical education in medical ethics and complete at least 14 hours of continuing medical education in prescribing, based on unethical and unprofessional conduct in that Respondent continued to prescribe Stadol NS to a person known by the Respondent to be addicted; that Respondent continued to operate a medical office with the addicted person in it, after the addiction was acknowledged on July 8, 1997; writing prescriptions for other than medically accepted purposes and conduct that might be harmful to the medical or physical health of the patient or the public; incompetency, gross negligence, repeated negligence.

B. The conduct resulting in the Missouri Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York and state law.

1. New York Education Law §6530(2) (practicing the profession beyond its authorized scope);
2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(4) (gross negligence);
4. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules or regulations, governing the practice of medicine);
5. New York Education Law §6530(20) (moral unfitness);
6. New York Education Law §6530(21) (making or filing a false report);
7. New York Education Law §6530(24) (practicing beyond the scope permitted by law); and/or
8. New York Education Law §6530(32) (inadequate record keeping).

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by 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, in that Petitioner charges:

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

### SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken 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 New York state, in that Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: May 17, 2002  
Albany, New York



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