



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 20, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Robelto A. Osborne, M.D.  
The Lennar Center  
8720 North Kendall Drive, Suite 108  
Miami, Florida 33173

Robelto A. Osborne, M.D.  
8955 S. W. 87<sup>th</sup> Court  
Suite #104  
Miami, Florida 33176

**RE: In the Matter of Robelto A. Osborne, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-165) 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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

COPY

IN THE MATTER

OF

ROBELTO A. OSBORNE, M.D.

DETERMINATION

AND

ORDER

BPMC #01-165

A Notice of Referral Proceeding and a Statement of Charges, both dated April 10, 2001, were served upon the Respondent, **Robelto A. Osborne, M.D.** **Fred Levinson, M.D.**, Chairperson, **Jill Rabin, M.D.**, and **Randolph Manning, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct ("the Board"), served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on June 21, 2001, at the offices of the New York State Department of Health ("the Petitioner"). The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Paul Robert Maher, Esq.** and **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person on his own behalf.

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 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)(d). 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:

Roberto A. Osborne, 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. Roberto A. Osborne, M.D., the Respondent, was authorized to practice medicine in New York State on August 18, 1987, by the issuance of license number 171923 by the New York State Education Department (Petitioner's Ex. 4).

2. On September 5, 2000, the State of Florida Board of Medicine ("Florida Board"), by a Final Order ("Florida Order"), reprimanded the Respondent, imposed a \$5,000.00 administrative fine, placed his license to practice medicine on probation for one year and required him to undergo an evaluation. The Florida Order was the result of a

Consent Agreement between the Florida Department of Health and the Respondent settling professional misconduct charges that had been brought against the Respondent by the Florida Department of Health.

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State pursuant to New York Education Law Section 6530(32), the statute that makes inadequate medical record keeping professional misconduct.

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

#### **SPECIFICATION**

"Respondent violated New York Education Law Section 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**

This New York State disciplinary proceeding is based on a disciplinary action that arose in Florida. In Florida, the Respondent was charged by the Florida Department of Health in an Administrative Complaint (Petitioner's Ex. 5, pp. 21-29) with providing substandard medical care to two patients and with keeping inadequate medical records. The Respondent and the Florida Department of Health settled the case by means of a Consent Agreement (Petitioner's Ex. 5, pp. 5-20). This Consent Agreement was modified by the Florida Board in the Florida Order (Petitioner's Ex. 5, pp. 1-2).

The Petitioner, in its Statement of Charges (Petitioner's Ex. 1, pp. 4-5) contended that this Florida documentary evidence justified a finding that the Respondent engaged in conduct that would have constituted professional misconduct in New York State had the acts occurred in this state. Specifically, the Statement of Charges stated that the Respondent's actions would have fallen into the following categories of professional misconduct:

1. New York Education Law Section 6530(3) (negligence on more than one occasion);
2. New York Education Law Section 6530(4) (gross negligence);
3. New York Education Law Section 6530(5) (incompetence on more than one occasion);
4. New York Education Law Section 6530(6) (gross incompetence);
5. New York Education Law Section 6530(30) (abandoning or neglecting a patient); and/or
6. New York Education Law Section 6530(32) (inadequate recordkeeping). (Petitioner's Ex. 1, pp. 4-5)

The Hearing Committee has concluded that the hearing record supports only one of these six charges, the charge of inadequate recordkeeping. Although the charges in the Florida Administrative Complaint contain a description of medical treatment that arguably constitutes negligence and incompetence on more than one occasion, gross negligence, gross incompetence and the abandonment or neglect of a patient, neither the Florida Consent Agreement nor the Florida Order makes any findings of fact or draws any conclusions regarding any of the charges, nor do these documents contain any admissions by the Respondent that he is guilty of any of the charges. The Hearing Committee, therefore, looked to the entire hearing record to determine whether there is sufficient support for a finding that the action taken against the Respondent in Florida was for acts that would constitute professional misconduct in New York State.

The Respondent testified in great detail that the charges regarding poor medical treatment of the two patients at issue are inaccurate. He forthrightly admitted in his testimony that the inadequate recordkeeping charge is true. He submitted into evidence three affidavits that corroborate significant portions of his testimony (Respondent's Ex. A, B and C). The Hearing Committee found the Respondent to be a credible witness. Based on all the evidence, the Hearing Committee concludes that the Florida disciplinary proceeding can serve as support for the inadequate recordkeeping charge, but that there is no reason to conclude that the Florida Order and the Consent Agreement are based on any other conduct that would constitute professional misconduct if performed in New York State.

Although the Hearing Committee limits its findings against the Respondent to the inadequate recordkeeping charge, it should not be concluded that it finds that what the Respondent did wrong is inconsequential or a minor deviation from his responsibilities. Inadequate patient records can have serious negative consequences should a physician provide medical care to the patient on a subsequent date. Inadequate records also frustrate any other physician who may have occasion to use them in the treatment of the patient. This also applies to any professional body or government agency responsible for monitoring the quality of care provided by the physician. Because of the importance of the physician's duty to keep complete medical records, the Respondent will be placed on probation and subject to the monitoring of his recordkeeping should he return to the active practice of medicine in New York State. The details of the probation and monitoring are contained in the Order, below.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. If the Respondent chooses to return to the practice of medicine in New York State, he must :

a. provide ninety days prior notice to the Petitioner's Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street, Suite 303, Troy, New York 12180-2299; and

b. in such notice, supply OPMC with documentation that he has successfully completed the evaluation process described in paragraph 3 of the Florida Order (Petitioner's Ex. 5, p. 2);

2. Upon the Respondent's return to active practice in New York State, a three-year period of probation will commence. The period of probation shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. The Respondent shall notify OPMC in writing, if the Respondent intends to leave the practice of medicine in New York State for a period of 30 days or more. The Respondent shall then notify OPMC again prior to any change in that status. The period of probation shall resume and any terms of probation that were not fulfilled shall be fulfilled upon the Respondent's return to practice in New York State.

3. The terms of probation are:

a. the Respondent shall submit written notification to OPMC, that notification to include a full description of any employment and practice, professional and residential addresses and telephone numbers, within or without New York State, and any investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within 30 days of each action;

b. the Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the

Respondent's compliance with the terms of this Order. The Respondent shall personally meet with a person designated by OPMC when requested;

c. the Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. OPMC may review the Respondent's office records, patient records and hospital charts and interview the Respondent and his staff at practice locations or OPMC offices;

d. during the period of probation, the Respondent's medical recordkeeping shall be monitored by a licensed physician ("practice monitor"), board certified in an appropriate specialty, proposed by the Respondent and approved in writing by OPMC.

e. the Respondent shall make available to the monitor all records requested by the practice monitor and shall permit on-site observation of his practice. The practice monitor shall visit the Respondent's medical practice at every location on a random unannounced basis at least monthly and shall examine a selection of at least 20 records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care or refusal to cooperate with the practice monitor shall be reported by the practice monitor within 24 hours to OPMC;

f. the Respondent shall be solely responsible for all expenses associated with the practice monitor, including fees of the monitoring physician;

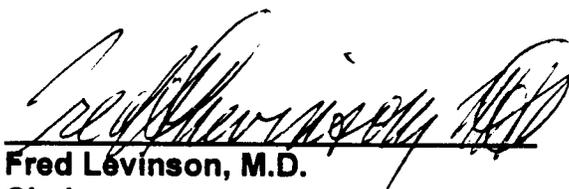
g. the Respondent shall cause the practice monitor to report quarterly, in writing, to OPMC; and

h. the Respondent shall comply with all terms of this Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with or violation of the terms, OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against the Respondent as may be authorized by law.

4. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**DATED: Middletown, New York**

7/12, 2001

  
Fred Levinson, M.D.  
Chairperson

Jill Rabin, M.D.  
Randolph Manning, Ph.D.

APPENDIX I

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

**IN THE MATTER**

**OF**

**ROBELTO A. OSBORNE, M.D.  
CO-00-11-5021-A**

**NOTICE OF**

**REFERRAL**

**PROCEEDING**

**TO: ROBELTO A. OSBORNE, M.D.**  
8955 S. W. 87<sup>th</sup> Court  
Suite #104  
Miami, FL 33176

**ROBELTO A. OSBORNE, M.D.**  
The Lennar Center  
8720 North Kendall Drive, Suite 108  
Miami, FL 33173

**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 15<sup>th</sup> day of May 2001, 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.

**EXHIBIT**

1

*Dr. Roberto*

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 7, 2001.

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 May 7, 2001, 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

*April 10*, 2001



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) 402-0820

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

---

IN THE MATTER  
OF  
ROBELTO A. OSBORNE, M.D.  
CO-00-11-5021-A

STATEMENT  
OF  
CHARGES

---

ROBELTO A. OSBORNE, M.D., the Respondent, was authorized to practice medicine in New York state on August 18, 1987, by the issuance of license number 171923 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about September 5, 2000, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), reprimanded Respondent, imposed a \$5,000.00 administrative fine, placed his license to practice medicine on one (1) year indirect probation with restrictions, and required him to undergo an evaluation, based upon failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstance, prescribing, dispensing, administering a controlled substance not in the best interest of the patient, and inadequate recordkeeping.

B. The conduct resulting in the Florida Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);
4. New York Education Law §6530(6) (gross incompetence);

5. New York Education Law §6530(30) (abandoning or neglecting a patient); and/or
6. New York Education Law §6530(32) (inadequate recordkeeping).

**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 New York state, in that Petitioner charges:

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

DATED: *April 10*, 2001  
Albany, New York

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