

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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

September 19, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nelson F. Leone, M.D.
8154 La Mesa Boulevard
La Mesa, California 91941

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

Effective Date: 09/26/96

RE: In the Matter of Nelson F. Leone, M.D.

Dear Dr. Leone and Ms. Fascia:

Enclosed please find the Determination and Order (No. BPMC-96-212) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

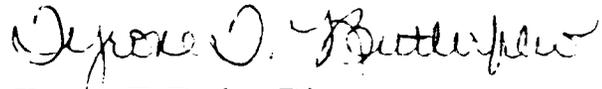
The notice of review served on the Administrative Review Board should be forwarded to:

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, 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:crc
Enclosure



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller State Office Building

Albany, New York 12237

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

October 9, 1996

CORRECTED LETTER
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nelson F. Leone, M.D.
8154 La Mesa Boulevard
La Mesa, California 91941

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

RE: In the Matter of Nelson Leone, M.D.

Dear Dr. Leone and Ms. Fascia:

In sending you the above noted Determination and Order, there was an error in the cover letter. The following is a corrected letter.

Five days after receipt of the 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

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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.

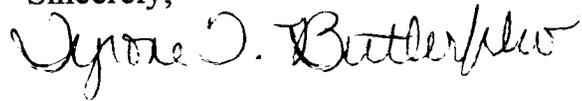
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Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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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, stylized initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw
Enclosure

IN THE MATTER
OF
NELSON F. LEONE, M.D.

DETERMINATION
AND
ORDER
BPMC-96-212

A Notice of Hearing dated May 13, 1996 and a Statement of Charges dated May 10, 1996 were served upon the Respondent, **NELSON F. LEONE, M.D.** **WILLIAM P. DILLON, M.D.** (Chairperson), **WILLIAM W. FALOON, M.D.** and **REV. EDWARD J. HAYES**, 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. **JEFFREY ARMON, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on July 24, 1996. The Department of Health appeared by **CINDY M. FASCIA**, Associate Counsel. The Respondent appeared on his own behalf. Evidence was received, witnesses were sworn and 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). 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by a Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Nelson F. Leone, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on June 26, 1973 by the issuance of license number 116478 by the New York State Education Department. (Ex. 4)
2. The Medical Board of California, by a Decision and Order issued on or about August 2, 1995, adopted the Proposed Decision issued by the Administrative Law Judge In The Matter of the Accusation Against Nelson F. Leone, M.D., and revoked Respondent's medical license. Respondent was also ordered to pay \$46,860.65 for the costs of investigation and prosecution of said action. (Ex. 3)
3. The California Board found Respondent guilty of professional misconduct in his treatment of four psychiatric patients including: grossly negligent conduct in violation of California Business and Professions Code Section 2234; acts of dishonesty and corruption related to

the qualifications, functions, and duties of a physician in violation of California Business and Professions Code Section 2234; aiding and abetting another person in the unlawful practice of psychology in violation of California Business and Professions Code Section 2234; general unprofessional conduct as defined in California Business and Professions Code Section 2234, in that Respondent committed "numerous breaches of the rules and ethical code of the medical profession and acted unprofessionally in ways which are unbecoming a member in good standing of the medical profession and this conduct demonstrates an unfitness to practice medicine"; and excessive prescribing of benzodiazepines in violation of California Business and Professions Code Section 725. (Ex. 3)

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 had met its burden of proof by demonstrating by a preponderance of the evidence that the Respondent had been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state. The basis for the California Board's decision was conduct of the Respondent which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law §6530(4) [practicing with gross negligence on a particular occasion]; N.Y. Education Law §6530(3) [practicing with negligence on more than one occasion]; N.Y. Education Law §6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine]; N.Y. Education Law §6530(2) [practicing the profession fraudulently]; N.Y. Education Law §6530(11) [permitting, aiding or abetting an unlicensed person to perform activities requiring a license]; N.Y. Education Law §6530(17) [exercising undue influence on a patient]. The Hearing Committee voted to sustain the Specification of professional misconduct set out in the Statement of Charges. .

DETERMINATION AS TO PENALTY

The Hearing 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.

Respondent raised a number of issues related to the propriety of matters determined by the California Administrative Law Judge in his decision. Such matters were factual questions most appropriately addressed and decided at the California disciplinary proceeding. Respondent was provided considerable opportunity, at a proceeding of almost forty hearing days, to contest the California Board's allegations of professional misconduct. The Hearing Committee did not believe it appropriate to review determinations made by the California Board which were based on intensive investigation of the allegations and an extensive administrative hearing.

The Hearing Committee believed Respondent was found to have committed serious acts of professional misconduct which would make license revocation the only appropriate penalty. The Committee considered Respondent to have repeatedly exercised poor medical judgment in his treatment of four vulnerable psychiatric patients. Respondent provided no evidence at this proceeding to indicate he recognized that his conduct had been improper. The Committee did not conclude that Respondent could be expected to conform to accepted standards of practice even if he were to be retrained and made subject to a practice supervisor.

The Respondent provided evidence demonstrating that the California determination is being appealed. Should that decision be reversed and his California license restored, he may petition for a restoration of his New York license.

ORDER

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

1. The specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: Albany, New York

9/18 1996


WILLIAM P. DILLON, M.D. Chairperson

**WILLIAM W. FALOON, M.D.
REV. EDWARD J. HAYES**

**TO: Cindy Fascia, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237**

**Nelson F. Leone, M.D.
8154 La Mesa Boulevard
La Mesa, California 91941**



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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
NELSON F. LEONE, M.D. : PROCEEDING

-----X

TO: NELSON F. LEONE, M.D.
10270 Fuerte Drive
La Mesa, California 91941

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 24th day of July, 1996 at 10:00 in the forenoon of that day at the OGS Conference Room (at entrance to the Corning Tower Building), South Mall, Concourse Level, Empire State Plaza, Albany, New York 12230.

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

Delors
EXHIBIT L
ID. *V* EVD. *V*
DATE: 7-24-96
BETSY HELM. CSR., RPR

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 15, 1996.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 15, 1996 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
May 13, 1996

Peter D. Van Buren

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

Inquiries should be addressed to:

Cindy M. Fascia
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
NELSON F. LEONE, M.D. : CHARGES

-----X

NELSON F. LEONE, M.D., the Respondent, was authorized to practice medicine in New York State on June 26, 1973, by the issuance of license number 116478 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. The Medical Board of California, by a Decision and Order issued on or about August 2, 1995, adopted the Proposed Decision issued by the Administrative Law Judge In the Matter of the Accusation Against Nelson F. Leone, M.D., revoked Respondent's medical license. Respondent was also ordered to pay \$46,860.65 for the costs of investigation and prosecution of said action.

2. The California Board found Respondent guilty of professional misconduct in his treatment of four psychiatric patients, including grossly negligent conduct in violation of California Business and Professions Code section 2234; acts of dishonesty and corruption related to the qualifications,

functions, and duties of a physician in violation of California Business and Professions Code section 2234; aiding and abetting another person in the unlawful practice of psychology in violation of California Business and Professions Code section 2234; general unprofessional conduct as defined in California Business and Professions Code section 2234, in that Respondent committed "numerous breaches of the rules and ethical code of the medical profession and acted professionally in ways which are unbecoming a member in good standing of the medical profession and this conduct demonstrates an unfitness to practice medicine"; and excessive prescribing of benzodiazepines in violation of California Business and Professions Code section 725. Respondent's misconduct is set forth in detail in the Proposed Decision.

3. Respondent's conduct upon which the California Board's findings of guilt were based would, if committed in New York state, constitute professional misconduct under the laws of New York state, including but not limited to: N.Y. Education Law §6530(4) [practicing with gross negligence on a particular occasion]; N.Y. Education Law §6530(3) [practicing with negligence on more than one occasion]; N.Y. Education Law §6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine]; N.Y. Education Law §6530(2) [practicing the profession fraudulently]; N.Y. Education Law §6530(11) [permitting, aiding or abetting an unlicensed person to perform activities requiring a license]; N.Y. Education Law §6530(17) [exercising undue influence on a patient].

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(b), by reason of 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 1 through 3.

DATED: *May 10*, 1996
Albany, New York

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