



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner

Paula Wilson  
Executive Deputy Commissioner

August 31, 1994

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James Spencer Lipton, M.D.  
Inmate #41182-004  
P.O. Box 600  
Federal Bureau of Prisons  
Eglin Air Force Base  
Florida 32542-7606

Kevin P. Donovan, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Empire State Plaza  
Corning Tower - Room 2438  
Albany, New York 12237

James Spencer Lipton, M.D.  
3801 West Hillsboro Blvd. #B-201  
Coconut Creek, Florida

Effective Date: 9/7/94

### **RE: In the Matter of James Spencer Lipton, M.D.**

Dear Dr. Lipton and Mr. Donovan :

Enclosed please find the Determination and Order (No. 94-169) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he

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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER  
OF  
JAMES LIPTON, M.D.**

**DETERMINATION  
AND  
ORDER**

NO. BPMC-94-169

**ARSENIO G. AGOPOVICH, M.D.**, (Chair), **ARTHUR J. SEGAL, M.D.** and **MICHAEL J. BROWN, R.P.A.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law.

**MARC P. ZYLBERBERG, ESQ.**, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **KEVIN P. DONOVAN, ESQ.**, Assistant Counsel.

**JAMES LIPTON, M.D.**, (hereinafter "Respondent") failed to appear personally at the hearing, was not represented by counsel and failed to submit any answer or response to said Statement of Charges.

A hearing was held on August 10, 1994. Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

## STATEMENT OF CASE

This case was brought pursuant to §230(10)(p) of the Public Health Law of the State of New York (hereinafter P.H.L. §230[10][p], also known as an "expedited hearing").

The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty to be imposed on the licensee<sup>1</sup> (Respondent).

Respondent, JAMES LIPTON, M.D., is charged with professional misconduct within the meaning of §6530(9)(a)(ii) of the Education Law of the State of New York (hereinafter Education Law), to wit: professional misconduct ... by reason of being convicted of committing an act constituting a crime under Federal Law (Petitioner's Exhibit # 1 and §6530[9][a][iii] of the Education Law).

A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.

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<sup>1</sup> P.H.L. §230(10)(p), fifth sentence.

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Unless otherwise noted, all Findings and Conclusions herein were unanimous.

1. Respondent was authorized to practice medicine in New York State on May 13, 1974 by the issuance of license number 119945 by the New York State Education Department. (Petitioner's Exhibit # 1 & Petitioner's Exhibit # 2)<sup>2</sup>
2. The Respondent is not currently registered with the New York State Education Department. (Petitioner's Exhibit #1)
3. The Respondent was personally served with the Notice of Referral Proceeding, the Statement of Charges and a summary of the Department of Health Hearing Rules on June 14, 1994. (Petitioner's Exhibit # 1)
4. Respondent was arrested on June 6, 1989. The United States Attorney in the Southern District of Florida filed an indictment and superseding indictment against Respondent and 3 other individuals for various violations of Federal Laws. (Petitioner's Exhibit # 3)
5. As a result of said indictments, Respondent was found guilty of 7 counts under the superseding indictment, as follows:

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<sup>2</sup> refers to exhibits in evidence submitted by the New York State Department of Health.

knowingly and intentionally conspired to possess with intent to distribute methamphetamine and Phenyl-2-Propanone (Schedule II controlled substances);<sup>3</sup>

knowingly and intentionally manufactured methamphetamine;<sup>4</sup>

knowingly and intentionally manufactured Phenyl-2-Propanone;<sup>5</sup>

knowingly and intentionally manufactured methaqualone (Schedule I controlled substance);<sup>6</sup>

knowingly and intentionally possess with intent to distribute cocaine (Schedule II controlled substance);<sup>7</sup>

knowingly, intentionally and unlawfully attempt to distribute Oxycodon (Percodan, a Schedule II controlled substances, [two separate occasions])<sup>8</sup>  
(Petitioner's Exhibit # 3)

6. As a result of said finding of guilt, Respondent was sentenced to 138 months imprisonment in the custody of the United States Bureau of Prisons.

(Petitioner's Exhibit # 3)

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<sup>3</sup> Title 21, United States Code §846.

<sup>4</sup> Title 21, United States Code §841(a)(1).

<sup>5</sup> Title 21, United States Code §841(a)(1).

<sup>6</sup> Title 21, United States Code §841(a)(1).

<sup>7</sup> Title 21, United States Code §841(a)(1).

<sup>8</sup> Title 21, United States Code §846.

## CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the June 9, 1994 Statement of Charges, are SUSTAINED <sup>9</sup>:

Paragraph A. : ( 4 - 5 )

The Hearing Committee further concludes that the following Specifications of Charges are SUSTAINED <sup>10</sup>:

SPECIFICATION OF MISCONDUCT: ( Paragraph: A )

The Hearing Committee concludes that the Department of Health has shown that Respondent was convicted of committing a crime under Federal Law. Respondent's conviction constitutes professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

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<sup>9</sup> The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

<sup>10</sup> The citations in parentheses refer to the Factual Allegations which support each Specification.

## DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. Therefore the Committee is bound by the documentary evidence presented.

The record establishes that Respondent was convicted of committing acts constituting crimes under Federal Law. Respondent was convicted of significant crimes and was given a lengthy prison sentence.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

ORDER

Based on 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**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

**DATED:** Albany, New York  
August, 24, 1994



ARSENIO G. AGOPOVICH, M.D., Chair

ARTHUR J. SEGAL, M.D.  
MICHAEL J. BROWN, R.P.A.

To: James Spencer Lipton, M.D.  
Inmate # 41182-004  
P.O. Box 600  
Federal Bureau of Prisons  
Eglin Air Force Base,  
Florida 32542 - 7606

James Spencer Lipton, M.D.  
3801 West Hillsboro Blvd. # B-201  
Coconut Creek, Fl.

Kevin P. Donovan, Esq., Associate Counsel,  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower Building, Room 2429  
Empire State Plaza  
Albany, New York 12237

**A P P E N D I X I**



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

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IN THE MATTER : NOTICE OF  
OF : REFERRAL  
JAMES LIPTON, M.D. : PROCEEDING

-----X

TO: JAMES LIPTON, M.D.  
Inmate #41182-004  
P.O. Box 600  
Federal Bureau of Prisons  
Eglin Air Force Base, Florida 32542-7606

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 10th day of August, 1994, at 10:00 in the forenoon of that day at The New York Court of Claims, Courtroom 1, 7th Floor, Justice Building, Empire State Plaza, Albany, New York.

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, 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 - August 1, 1994.

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 August 1, 1994, 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 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

*June 9*, 1994



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

Inquiries should be addressed to:

Kevin P. Donovan  
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  
JAMES S. LIPTON, M.D. : CHARGES

-----X

JAMES S. LIPTON, M.D. the Respondent, was authorized to practice medicine on May 13, 1974, by the issuance of license number 119945 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York state. Respondent's last known address is P.O. Box 600, Dorm 4D, Bureau of Prisons, Eglin Air Force Base, Florida 32542.

FACTUAL ALLEGATIONS

A. Respondent was convicted in the United States District Court of the Southern District of Florida of the following crimes: conspiracy to possess with intent to distribute in violation of 21 USC §846; manufacturing methamphetamine in violation of 21 USC §841(a)(1); manufacturing phenyl-2-proprone in violation of 21 USC §841(a)(1); manufacturing methaqualone in violation of 21 USC §841(a)(1); possession with intent to distribute cocaine in violation of 21 USC §841(a)(1); attempt to distribute Percodan in violation of 21 USC §846. Respondent was found guilty of said crimes and was sentenced to one hundred thirty eight months of incarceration in a federal prison, among other terms, at a sentencing on September 20, 1991.

SPECIFICATION OF MISCONDUCT

The Respondent is charged with professional misconduct within the meaning of New York Education Law Section 6530(9)(a)(ii) (McKinney Supp. 1994) in that he was convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts of paragraph A.

DATED: Albany, New York  
*June 9, 1994*

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