



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

December 3, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

Jamshid M. Arfania, M.D.
65 Leighton Avenue
Yonkers, New York 10705

EFFECTIVE DATE DECEMBER 10, 1996

RE: In the Matter of Jamshid M. Arfania, M.D.

Dear Mr. Smith and Dr. Arfania:

Enclosed please find the Determination and Order (No. 96-288) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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.

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 that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER

OF

JAMSHID M. ARFANIA, M.D.

DETERMINATION

AND

ORDER

BPMC-96-288

A Notice of Hearing and Statement of Charges, both dated July 24, 1996, were served upon the Respondent, **JAMSHID M. ARFANIA, M.D.** **STANLEY GITLOW, M.D.**, (Chair), **JOHN H. S. HOLLOMAN, JR., M.D.** and **DENNIS HARRIGAN**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 26, 1996. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **DAVID W. SMITH**, Associate Counsel, of Counsel. The Respondent appeared in person, but was not represented by counsel. Evidence was received and witnesses 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) and 6530 (9)(d). 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 parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Respondent was authorized to practice medicine in New York State on August 1, 1972, by the issuance of license number 113285 by the New York State Education Department. (Pet. Ex. #2)

2. On October 16, 1995, the Division of Medical Quality of the Medical Board of California("Board") issued a Stipulated Settlement and Disciplinary Order ("Order") against Respondent. In such Order, Respondent admitted that he was mentally impaired for the practice of medicine which is professional misconduct under §2234 of the California Business and Professional Code. (Ex.3)
3. The Board revoked the medical license of Respondent to practice medicine in California, stayed the revocation and placed him on probation for five(5) years. (Ex. 3)
4. The Order also actively suspended Respondent from the practice of medicine for thirty (30) days., required him to take and successfully complete a course in ethics approved by the Board, undergo a psychiatric evaluation and submit for approval a plan of practice to be monitored by another physician. (Ex. 3)
5. Respondent moved from California to New York without completing any part of the California requirements, and the Order is currently tolled pending his return. (T. 6, 18, 22, 24)

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 Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent entered into a stipulation and settlement agreement with the California Board in which he admitted that he was mentally impaired to practice medicine. The California Board placed Respondent on probation for 5 years upon the condition that he undergo psychiatric evaluation, submit a plan of practice for

monitoring and complete an ethics course. Section 6530 (9)(b) defines professional misconduct as 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. Section 6530(9)(d) defines professional misconduct as having one's license to practice medicine revoked, suspended or having other 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 revocation, suspension or other disciplinary action, would if committed in New York State, constitute professional misconduct under the laws of New York state. As a result, the Hearing Committee voted to sustain the First and Second Specifications of professional misconduct contained within 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 license to practice medicine in the State of New York should be revoked. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee notes Respondent's demeanor at the hearing was consistent with the information provided in the California Stipulation, Accusation and Investigation Report. The Hearing Committee believes that Respondent suffers from a reasoning disorder in that Respondent exhibited great difficulty in communicating at the hearing and it was difficult to elicit information from him. It was however, clear to the Hearing Committee that Respondent failed to take responsibility for his California discipline and blamed it merely on a change of address problem. The Hearing Committee believes that Respondent cannot be allowed to practice medicine in New York State, until

he undergoes a psychiatric evaluation and complies with all other conditions of the terms of his California probation. Upon successful completion of the California probation, Respondent may then re-apply for his New York State license. Therefore, under the circumstances, revocation is the appropriate sanction in this instance.

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 is hereby **REVOKED.**

Dated: New York, New York
11/29, 1996



STANLEY GITLOW, M.D. (Chair)

JOHN H. S. HOLLOMAN, JR., M.D.
DENNIS HARRIGAN

TO: David W. Smith, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

Jamshid M. Arfania, M.D.
65 Leighton Avenue
Yonkers, NY 10705

(14)

APPENDIX I

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

IN THE MATTER
OF
JAMSHID M. ARFANIA, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: JAMSHID M. ARFANIA, M.D.
65 Leighton Avenue
Yonkers, New York 10705

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act §§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 September 26, 1996, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

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, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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, 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.

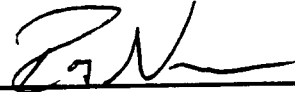
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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: New York, New York
July 24, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

DAVID W. SMITH
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2617

IN THE MATTER
OF
JAMSHID M. ARFANIA, M.D.

STATEMENT
OF
CHARGES

JAMSHID M. ARFANIA, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 1, 1972, by the issuance of license number 113285 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On October 16, 1995, the Division of Medical Quality of the Medical Board of California ("Board") issued a Stipulated Settlement and Disciplinary Order ("Order") against Respondent. In such Order Respondent admitted that he was mentally impaired for the practice of medicine which is professional misconduct under §2234 of the California Business and Professions Code:
1. The Board revoked the medical license of Respondent to practice medicine in California, stayed the revocation and placed him on probation for five (5) years.
 2. The Order also actively suspended Respondent from the practice of medicine for thirty (30) days, required him to take and successfully complete a course in ethics approved by the Board, undergo a psychiatric evaluation and submit for approval a plan of practice to be monitored by another physician.

3. Respondent moved from California to New York without completing any part of the California requirements, and the Order is currently tolled pending his return.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1996) 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 [namely N.Y. Educ. Law §6530(8)(a) psychiatric condition impairing the ability to practice)], as alleged in the facts of the following:

1. Paragraphs A and A1-3

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1996) by having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or

surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State [namely N.Y. Educ. Law §6530(8)(a psychiatric condition impairing the ability to practice)], as alleged in the facts of, as alleged in the facts of: the following:

2. Paragraphs A and A1-3.

DATED: July 24, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct