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

June 29, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Vicky Georges Hufnagel, M.D.
C/O Seymour Floyd
8721 Beverly Boulevard
Los Angeles, California 90048

Vicky Georges Hufnagel, M.D.
1060 Hanley Avenue
Los Angeles, California 90049

PUBLIC

Marta Sachey, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

RE: In the Matter of V. Georges Hufnagel, M.D.

Dear Dr. Hufnagel and Ms. Sachey:

Enclosed please find the Determination and Order (No.98-33) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

In The Matter Of

V. Georges Hufnagel, M.D. (Respondent)

Administrative Review Board (ARB) Determination and Order 98 - 33

Proceeding to review a Determination by a Hearing Committee (Committee) from Board for Professional Medical Conduct (BPMC)

Before Board Members : Briber, Stewart, Sinnott, Price & Shapiro.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.

For the Respondent: **The Respondent represented herself**
For the Petitioner: **Marta Sachey, Esq.**

In this proceeding, the ARB considers what action to take against the Respondent's License to practice medicine in New York (N.Y. License), following a decision by the California Medical Board (California Board) to revoke the Respondent's California License. A BPMC Committee conducted a hearing on that issue, determined that California Board had found the Respondent guilty on several, diverse and serious misconduct grounds, determined that the Respondent's California conduct would constitute misconduct under New York Law and voted to revoke the Respondent's License. The Respondent then commenced this proceeding, pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney Supp. 1998), asking the ARB to overturn the Committee's Determination, on several grounds, or in the alternative, asking the Board to reduce the sanction that the Committee imposed. After considering the hearing record and the parties' briefs and reply briefs, the ARB sustains the Committee's Determination and Penalty.

COMMITTEE DETERMINATION ON CHARGES

The record demonstrates that the Respondent held a medical License in California in addition to her License in New York [Petitioner Exhibit 5]. In 1989, the California Board revoked the Respondent's California License, upon finding that the Respondent:

- submitted false insurance reports and/or claims for reimbursement,
- performed second surgical procedures on patients too soon after initial surgery,
- failed to inform patients clearly about all surgical options,
- failed to perform an indicated hysterectomy,
- recommended and performed unnecessary surgery,

- hospitalized patients unnecessarily,
- created false medical records,
- performed surgery negligently and incompetently, and,
- used diagnostic procedures excessively.

After various court proceedings and stays, the California Board's Order became effective in September, 1996, under an Order from the Superior Court for the State of California for the County of Los Angeles [Petitioner Exhibit 6]. Both the California Court of Appeal and the California Supreme Court have denied the Respondent's Petition to review the 1996 revocation [Petitioner Exhibit 8].

The Petitioner then commenced a proceeding before BPMC, by filing charges that alleged that the Respondent violated N. Y. Educ. Law § 6530(9)(b) (McKinney Supp. 1998), by:

- committing conduct in another state, that resulted in a decision by that state's authorized disciplinary agency, finding the Respondent guilty for professional misconduct,
- for conduct that would constitute misconduct under New York Law.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's California misconduct, would constitute misconduct in New York, under the following categories:

- practicing fraudulently, a violation under N. Y. Educ. Law § 6530(2) (McKinney Supp. 1998),
- practicing with gross negligence, a violation under N. Y. Educ. Law § 6530(4) (McKinney Supp. 1998),
- practicing with incompetence on more than one occasion, a violation under N. Y. Educ. Law § 6530(5) (McKinney Supp. 1998),
- willfully making or filing a false report, a violation under N. Y. Educ. Law § 6530(21) (McKinney Supp. 1998), and,
- ordering excessive tests, a violation under N. Y. Educ. Law § 6530(35) (McKinney Supp. 1998).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney Supp. 1998), before a BPMC Committee, who rendered the Determination

which the ARB now reviews. In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Committee accepted the California Board's Decision and the underlying factual findings, sustained the charges and voted to revoke the Respondent's N.Y. License. The Committee found that the Respondent's fraudulent acts demonstrated that the Respondent lacked the good moral character to practice in New York and that the Respondent's medical treatment for the California patients demonstrated that the Respondent poses a threat to patients in New York. In reaching this Determination, the Committee found the Respondent's testimony evasive or lacking in credibility and found that the Respondent never assumed responsibility for her actions. The Committee also noted that the Respondent acknowledged her psychological impairment, but had failed to take any action to obtain treatment. The Committee rendered their Determination on February 11, 1998. This proceeding followed.

REVIEW HISTORY AND ISSUES

This proceeding commenced on March 4, 1998, when the ARB received the Notice requesting a Review. The Respondent subsequently submitted a letter requesting a sixty day extension in the original April 6, 1998 date for filing briefs, so that she could obtain new counsel and copies of the hearing record. The ARB granted the Respondent an extension only until May 8, 1998. We also accepted a late reply brief from the Respondent, upon accepting her explanation that she received the Petitioner's brief several weeks after mailing. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and reply brief and the Petitioner's brief and reply brief. The record closed when the ARB received the Respondent's reply brief on June 1, 1998.

Respondent's Issues: At the outset, the Respondent asks for additional time from the ARB to submit additional documents. The Respondent asserts that the California Board and the Office for Professional Medical Conduct (OPMC) have files on the Respondent, that she has requested, that contain information relevant to the Respondent's claims that she failed to receive a fair hearing before

the California Board. The Respondent's submissions proceed then to challenge the California Board's proceedings and findings and to allege that the California Board had no actual grounds for taking action against Respondent's California License. The Respondent also challenges the BPMC proceedings, alleges errors by the Committee's Administrative Officer and the Committee and alleges bias by the Committee. In the alternative, the Respondent argues that the Committee imposed an unduly harsh penalty and that the Committee based their penalty on uncharged conduct.

The Petitioner replies that neither the Respondent's assertions concerning the hearing process nor her assertions concerning the Committee's Determination provide a basis to overturn the Committee's Determination. The Petitioner contends that the Respondent's submissions contained material from outside the hearing record and asks the ARB to ignore such material. The Petitioner also asks the ARB to reject the Respondent's challenges to the California Board's determination and proceeding because neither the ARB nor the Hearing Committee can relitigate the issues that the California Board has decided. Finally, the Petitioner contends that the Respondent's challenges to the Direct Referral Proceeding lack merit legally and factually.

Petitioner's Issues: The Petitioner's brief describes the Respondent's California misconduct as pervasive. The Petitioner contends that the Committee had sufficient grounds to revoke the Respondent's New York License due to the Respondent's serious and extensive misconduct in California, her evasiveness in answering questions at the hearing and the Respondent's failure to assume responsibility for her conduct.

In reply, the Respondent argues that the Petitioner's brief provides no detail and the Respondent denies ever being found guilty for certain acts. The Respondent also used her reply brief to renew her challenges to the Committee's Determination.

REVIEW BOARD DETERMINATION

The ARB has considered the record and the parties' briefs. All ARB members took part in this case. The Board reached our final Determination in this matter on June 9, 1998. We vote to reject the Respondent's request for additional time to submit additional documents, we reject the Respondent's

attempts to relitigate the California proceedings, we reject the Respondent's procedural challenges to the Direct Referral Proceeding, we sustain the Committee's Determination that the Respondent's conduct in California would constitute misconduct under New York Law and we sustain the Committee's Determination revoking the Respondent's New York License.

Request For Extension and Additional Submissions: The Respondent has argued that she has had difficulty in preparing her defense in this proceeding because the California Board and OPMC possess documents that would aid the Respondent and both bodies refuse to provide her with the documents. These documents relate supposedly to the California Proceeding. The Respondent has asked to be able to submit additional material to the ARB if she should obtain any records that she seeks from the two bodies. The ARB rejects that request on three grounds. 1.) The ARB has already provided the Respondent additional time for filing her brief and reply brief, beyond the time limits that N.Y. Pub. Health Law § 230-c(4)(a) (McKinney Supp. 1998) provides. 2.) The Respondent requested the extension so she could submit material from outside the hearing record. In a review under N.Y. Pub. Health Law § 230c(4)(a) (McKinney Supp. 1998), the ARB may consider only the record below and the parties' briefs. 3.) The Respondent admitted that she would be submitting the additional material to challenge the underlying California Board Determination and Proceedings. Neither the ARB review nor the Committee have the authority to reopen the California Proceeding, after the California Board has rendered their final Order and after the California Courts have sustained that Order, see Matter of Singla v. N.Y.S. Dept. of Health, 229 A.D.2d 798, 646 N.Y.S.2d 421 (Third Dept. 1996).

In addition, we note that we have disregarded any documents that the Respondent attempted to submit with her brief from outside the hearing record.

The Respondent's Procedural Challenges: The Respondent alleged several procedural errors in the Direct Referral Proceeding, such as:

- the Administrative Officer's failure to rule on the Respondent's challenge to the California Proceeding on collateral estoppel grounds,
- the Administrative Officer's improper limitation on the Respondent's witnesses,
- the failure by OPMC to provide the Respondent a pre-hearing interview,

- the Committee's failure to comply with statutory time frames for conducting hearings and issuing their Determination, and,
- the refusal to allow the Respondent to cross-examine witnesses against her.

The ARB concludes that all these allegations raise legal issues that we leave the Respondent to raise with the Courts. The ARB's statutory review authority limits us to determining whether the Committee rendered a Determination and penalty consistent with their findings and conclusions and whether the Committee rendered an appropriate penalty, see N.Y. Pub. Health Law § 230-c(4)(b) (McKinney Supp. 1998).

Under N.Y. Pub. Health Law § 230-c(4)(b) (McKinney Supp. 1998), the ARB may remand a case to the Committee for further proceedings. The ARB considered the Respondent's procedural challenges as a request for a remand, but we found no grounds in the record to grant such a remand. The Petitioner brought the Direct Referral Proceeding against the Respondent under N.Y. Pub. Health Law § 230(10)(p) (McKinney Supp. 1998). That statute provides the Committee authority to limit the number of and the time for witnesses at the Direct Referral hearing, so we see no reason to remand as the Committee exercised that authority properly here and placed limits on the witnesses to testify. That same statute contains no requirement for the Respondent to receive a pre-hearing interview and contains no time limitations on how long the hearing shall last and when the Committee must take action, so we find no reason to remand on those grounds. The time limitation and pre-hearing interview requirements apply to different proceedings [see N.Y. Pub. Health Law § 230(10)(f) (McKinney Supp. 1998)]. We also see no reason to remand for the Administrative Officer to rule on the Respondent's challenge to the California Order on collateral estoppel grounds. In a Direct Referral Proceeding to determine whether misconduct findings against a Respondent in another state would constitute misconduct under New York Law, the determination rests with the Committee to decide if the conduct would constitute New York misconduct, rather than with the Administrative Officer, Matter of Shankman v. DeBuono, __ A.D.2d __, 655 N.Y.S.2d 164 (Third Dept. 1997); Matter of Ricci v. Chassin, 220 A.D.2d 828, 632 N.Y.S.2d 303 (Third Dept. 1995). Finally, the Petitioner presented no witnesses at the hearing, so the Respondent had no one to cross-examine. The Petitioner presented their case on documents alone.

The California Determination: To sustain misconduct charges under N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1998), a Committee must first determine that another state's authorized disciplinary body took an action against a physician's license in that state that resulted in finding the Respondent guilty for improper professional conduct or professional misconduct. The Petitioner's Exhibit 5-7 demonstrate that the California Board found the Respondent guilty for gross negligence, incompetence, excessive use of diagnostic procedures, knowingly making false documents, creating false records with fraudulent intent and dishonesty or corruption. These exhibits demonstrated that the California Board found the Respondent guilty for improper professional conduct or professional misconduct. The California Courts have sustained that finding or denied petitions to review that finding, up to the California Supreme Court [Petitioner Exhibit 8].

The Respondent argued before the Committee and now argues in this proceeding that we should disregard the California Board's Order for numerous reasons. We reject those arguments. We have already noted that neither the Direct Referral Proceeding nor this proceeding present forums for the Respondent to relitigate the California Proceeding. The Respondent had twenty-seven hearing days and then additional oral arguments to contest the case before the California Board and then several years to challenge the California Board's Order in the California Courts. The ARB has no authority to overrule the California Board or Courts or to disregard their decisions in this proceeding.

Misconduct Under New York Law: After finding that the California Board found the Respondent guilty for professional misconduct or unprofessional conduct, the Committee must then consider whether the conduct in the other state would constitute misconduct under New York Law, if the Respondent had committed the conduct in this state [N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1998)]. The Committee sustained allegations that the Respondent's California conduct would constitute misconduct under N. Y. Educ. Law §§ 6530(2), 6530(4-5), 6530(21) & 6530(35) (McKinney Supp. 1998), for practicing medicine fraudulently, practicing medicine with gross negligence, practicing with incompetence on more than one occasion, willfully making or filing a false report and ordering excessive tests. The Respondent challenges that determination, arguing that the record provided insufficient information for the Committee to judge whether the care standards differ between New York and California. The Courts in New York have ruled, however, that another

state's Order, disciplining a physician, can provide sufficient evidence for a BPMC Committee to determine that the physician's conduct in the other state would constitute misconduct under New York Law, Matter of Hatfield v. Dept. of Health of the State of N.Y., __ A.D.2d __, 665 N.Y.S.2d 755 (Third Dept. 1997), Matter of Ricci v. Chassin,(supra). The ARB holds that the California Board's Order [Petitioner Exhibit 5] and the California Court of Appeal decision in Hufnagel v. Medical Board of California [Petitioner Exhibit 6] provided the Committee with sufficient evidence to establish that the Respondent's California conduct would constitute gross negligence, incompetence on more than one occasion, fraud, ordering excessive tests and willfully making or filing a false report. The Respondent also challenged the Committee's Determination on other grounds, that we will address after discussing the evidence relating to each misconduct category.

The California Board concluded that the Respondent ordered excessive diagnostic procedures for a patient the Board's Order described as Christina S. The California Board found that Christina S. sought out the Respondent for pain relief and that treatment for pain relief provided no justification for the Respondent to order a multitude of laboratory tests for the patient [Petitioner Exhibit 5, Findings XXVII & XXXIII, pages 7-9]. The ARB holds that these findings provided the Committee sufficient evidence to conclude that the Respondent's conduct would constitute a violation under N.Y. Educ. Law § 6530(35) (McKinney Supp. 1998), for ordering excessive tests.

In two patient cases the California Board found and the California courts sustained the determination, that the Respondent committed gross negligence. The California Board determined that the Respondent performed surgery on Patient Christina S. and made a large cut in the uterus, apparently to deal with a tumor [Exhibit 5, Finding XXVIII, page 8]. When the Respondent learned the true diagnosis, adenomyosis (ingrowth of the uterine mucous membrane into the uterine musculature), the Respondent wedged out further uterine tissue [Exhibit 5, Finding XXX, page 8; Exhibit 6, Appeal Court Decision, page 22, footnote 16]. The California Board also determined that the Respondent committed gross negligence in treating Patient Rama H. for: failing and refusing to perform a hysterectomy, despite clear indications, refusing and failing to give the patient a clear option for treatment choice, refusing to disclose the need for further surgery, and ignoring the patient's condition [Exhibit 5, Finding XIX, pages 5-6]. Gross negligence under California Law means either

an extreme departure from the standard of practice or a lack of even scant care [Exhibit 6, Appeal Court Decision, page 25]. Gross negligence under N. Y. Educ. Law § 6530(4) (McKinney Supp. 1998) means an "egregious" or "conspicuously bad" departure from accepted medical practice standards, Spero v. Board of Regents,158 A.D.2d 763, 551 N.Y.S.2d 352 (Third Dept. 1990); either as a single act that rises to egregious proportions or multiple acts that cumulatively amount to egregious conduct Rho v. Ambach 74 N.Y.2d 318 (1989). The ARB holds that the California Board's findings concerning Christina S. and Rama H. provided sufficient evidence for the Committee to conclude that the Respondent's conduct in California would amount to gross negligence under New York Law.

The Petitioner also alleged that the Respondent's California conduct would constitute practicing fraudulently and willfully filing a false report under New York Law. In order to sustain a charge that a licensee practiced medicine fraudulently, a committee must find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (Third Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). A committee may infer the licensee's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (Third Dept. 1991). To prove willfully filing a false report, a committee must establish that a licensee made or filed a false statement willfully, which requires a knowing or deliberate act, Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501 N.Y.S.2d 923 (Third Dept. 1986). The California Board found that the Respondent:

- billed for procedures and treatment she never performed [Petitioner Exhibit 5, Findings VIII, XVI, XX, XLIV, LI, LIX & LXII];
- knowingly made and signed documents relating to medical practice which represented falsely that a state of facts existed, as well as creating records with fraudulent intent [Petitioner Exhibit 5, Findings IX, XVII, XXI & LXIII];

- created a physician's note to justify fraudulently what she realized to have been an unjustified hospitalization [Petitioner Exhibit 5, Finding LVI]; and,
- knowingly made a false statement with regard to a patient consent form [Petitioner Exhibit 5, Finding of Fact LXVII].

We hold that the California Board's Findings on these matters provided sufficient evidence for the Committee to conclude that the Respondent's conduct would constitute willfully filing false reports under N.Y. Educ. Law § 6530(21) (McKinney Supp. 1998). We also infer from the California Board's Order that the Respondent created the false documents, knowing the documents to be false, with the intent to mislead. We sustain, therefore, the Committee's Determination that the Respondent's conduct would constitute practicing fraudulently under N.Y. Educ. Law § 6530(2) (McKinney Supp. 1998).

The California Board's Order also determined that the Respondent practiced with incompetence in treating six patients. The New York Courts have accepted the definition that incompetence under N. Y. Educ. Law § 6530(5) (McKinney Supp. 1998) means to lack requisite knowledge or skill in medical practice, Matter of Dhabuwala v. State Bd. for Prof. Med. Conduct, 229 A.D.2d 752, 645 N.Y.S.2d 600 (Third Dept.1996). The California Board found that the Respondent:

- performed a uterine suspension on Patient Marsha C. in the face of uterine inflammation and possible infection [Petitioner Exhibit 5, Finding VII];
- performed non-emergency surgeries on Patient Jolina C. on two consecutive days [Petitioner Exhibit 5, Finding XIII];
- recommended unnecessary surgery for Patient Jan L. [Petitioner Exhibit 5, Finding XXIV];
- excised fatty adhesions, inappropriately from Patient Christine S., for cosmetic reasons, further increasing the patient's risk for more adhesions [Petitioner Exhibit 5, Finding XXXII];
- overreacted to bradycardia in Patient Karen G. and performed a laparotomy, and, continued with multiple surgical procedures despite the presumptive bradycardia diagnosis [Petitioner Exhibit 5, Finding XLVII]; and,
- hospitalized Patient Alicia G. unnecessarily [Petitioner Exhibit 5, Finding LVI].

The ARB holds that these Findings establish that the Respondent's California conduct in these cases demonstrated a lack of requisite knowledge or skill in medical practice that would constitute practicing with incompetence on more than one occasion under N. Y. Educ. Law § 6530(5) (McKinney Supp. 1998).

In addition to challenging the Committee's Determination as to the evidence's sufficiency, the Respondent also challenged the Determination, due to the Committee's composition and the way the Committee considered the evidence. We find no grounds to annul the Committee's Determination due to composition. The only requirement as to Committee composition appears in N. Y. Pub. Health Law § 230(6) (McKinney 1990). That statute requires a Committee to contain one lay and two physician members, as this Committee contained. Nothing in the statute requires Committees to contain even a physician from even the same specialty as the Respondent, Matter of Metzler v. N.Y.S. Bd. for Prof. Med. Cond., 203 A.D.2d 617, 610 N.Y.S.2d 334 (Third Dept. 1994), and certainly nothing in the statute requires a Committee to possess all the expertise that the Respondent's brief insists that this Committee lacked. The Respondent also alleged error by the Committee for failing to question her about her practice. The ARB holds that the record proves that allegation false. In addition, the Respondent made unsubstantiated allegations that the Committee members failed to read the transcripts, characterized the Committee as puppets and made suppositions about how one Committee member conducted his medical practice. The ARB considers all these allegations as accusations that the Committee harbored a bias against the Respondent or reached a Determination in this case on grounds other than the evidence in the record. We hold that the Respondent failed to prove that any bias motivated the Committee. To establish bias, the Respondent would have to show by factual allegations, rather than conclusory statements, that the Direct Referral Proceeding's outcome flowed from the bias, Matter of Chace v. DeBuono, 223 A.D.2d 961, 636 N.Y.S.2d 905 (Third Dept. 1996). The Respondent made no factual allegations showing any bias by the Committee, but instead made only conclusory allegations. Further, the record supports the Committee's Determination on the charges, so the Respondent could in no way prove that the Committee's Determination resulted purely from a bias or predisposition against the Respondent.

The Penalty: After determining that the Respondent's California conduct would constitute

misconduct under New York Law, the Committee voted to revoke the Respondent's New York License. The Committee viewed the Respondent's fraudulent acts as evidence that the Respondent lacks moral fitness and determined that the deficiencies that the Respondent displayed in medical care constitute a threat to medical consumers in New York. The Committee found nothing in the record to convince them that they could trust that the Respondent would abandon her fraudulent practices and found that the Respondent refuses to take responsibility for her actions. The Committee noted that the Respondent admitted her psychological impairment, but had taken no steps to obtain treatment. The Respondent challenges the Committee's Penalty Determination and argues that the record contains no evidence showing that the Respondent failed to assume responsibility for her actions, that the Committee imposed an overly harsh penalty and that the Committee imposed the penalty for conduct outside the statement of charges, such as the Respondent's psychological impairment and her past marriages. The ARB holds that the Committee imposed an appropriate penalty and we reject the Respondent's challenges on all grounds.

Both the California Board and the Committee concluded that the Respondent showed no remorse and little understanding concerning her conduct [Petitioner Exhibit 5, Finding LXXII, page 19; Committee Determination page 5]. The evidence on that issue came from the Respondent herself, who denied any wrongdoing and accused others for acting against her, due to malice or bias. The ARB agrees that the Respondent shows no remorse for her misconduct and gives no indication that she would correct her past practice patterns if she received a chance to continue practicing in New York. This issue becomes important in determining a penalty in this case, due to the serious deficiencies the Respondent demonstrated in her medical skills, in the cases at issue in this proceeding. Retraining or continuing education can aid a physician who has demonstrated deficiencies in knowledge or skills through repeated incompetent acts. Close supervision or license restrictions may also provide sufficient safeguards over a physician who has committed negligent acts or ordered unnecessary treatment. Such sanctions can work, however, only if the physician will cooperate with the restrictions or retraining program. A physician who lacks remorse over or understanding about her deficiencies lacks the insight, motivation and ability to complete a retraining program, successfully. The California Board determined that the Respondent lacked remorse and

voted to revoke her California License due to her deficiencies in medical care alone [Petitioner's Exhibit 6, page 7]. The Committee concluded that the Respondent's practice deficiencies presented a danger to New York's medical consumers. Their conclusion, that the Respondent took no responsibilty for her acts, establishes that the Respondent makes a bad candidate for retraining and rehabilitation. The ARB holds that these conclusions left the Committee no alternative, but to revoke the Respondent's N.Y. License, due to her deficient medical skills, standing alone.

The ARB rejects the Respondent's contention that revocation constitutes a harsh penalty in this case. The Respondent's extensive submissions to the ARB and her defense at the Direct Referral Proceeding failed to address the most damning charges against her, that she used her medical license to commit fraud. To practice medicine, a physician must possess integrity as much as she must possess knowledge or skill. A physician must deal honestly with her patients, with other physicians, with the facilities at which she practices, with third party payers and with regulators. The record demonstrates that the Respondent made a knowingly false document in a patient consent form, she created a false physician note to justify an unjustified hospitalization, she created false records and she billed for services she never performed. The false records and the false consent form could have actually compromised patient care. The false billings lead the ARB to conclude that the Respondent used her medical license to commit fraud for her own enrichment. Although the California Board imposed no sanction for the Respondent's fraudulent conduct [Petitioner Exhibit 6, page 7], the Committee found the fraudulent acts very serious in nature [Committee Determination page 5]. The ARB concludes that the Respondent's fraudulent acts, standing alone, provide sufficient grounds on which to revoke the Respondent's New York License.

In attempting to produce evidence in mitigation, the Respondent testified at the Direct Referral Proceeding about her difficult past, including failed marriages, and the Respondent admitted she suffers psychological impairment. The Committee addressed those grounds in their Determination and rejected them as a basis for imposing a sanction less severe than revocation. The Respondent now argues that the Committee's discussion about those issues demonstrates that the Committee based their penalty on the Respondent's impairment and her failed marraiges, issues from outside the Statement of Charges. The ARB disagrees. As we have noted above, the Committee had ample grounds to

revoke the Respondent's License either due to her fraudulent conduct and or her deficient medical care. The Committee did state, incorrectly, that the Respondent took no action to obtain treatment for her impairment. The record indicates that the Respondent has seen a psychologist and psychiatrist concerning her impairment and that the Respondent has been in therapy. The ARB concludes, however, that the mitigating factors in the Respondent's life fail to outweigh her misconduct. The Respondent overcame great hardships in her life and attained her medical license despite many obstacles. That medical license amounted to a public trust, that the Respondent violated through her fraudulent conduct. The ARB concludes that the Respondent's difficulties provide no excuse for her misconduct. We vote 5-0 to sustain the Committee's Determination to revoke the Respondent's N.Y. License.

ORDER

NOW, based upon this Determination, the Review Board renders the following **ORDER**:

1. The ARB **SUSTAINS** the Hearing Committee's Determination finding the Respondent guilty for professional misconduct.

2. The ARB **SUSTAINS** the Hearing Committee's Determination revoking the Respondent's License to practice medicine in New York State.

Robert M. Briber

Sumner Shapiro

Winston S. Price, M.D.

Edward C. Sinnott, M.D.

William A. Stewart, M.D.

In The Matter Of V. Georges Hufnagel, M.D.

William A. Stewart, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Hufnagel.

Dated : 24 June **, 1998**

William A. Stewart

William A. Stewart, M.D.

In The Matter Of V. Georges Hufnagel, M.D.

Edward C. Sinnott, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Hufnagel.

Dated : June 23, **1998**

Edward C. Sinnott, M.D.

In The Matter Of V. Georges Hufnagel, M.D.

Sumner Shapiro, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Hufnagel.

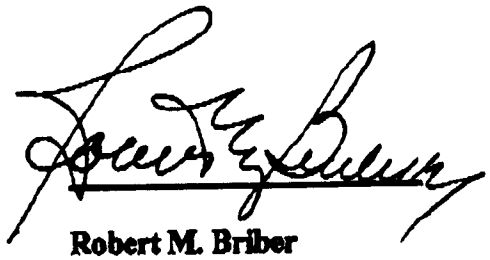
DATED: June 23, 1998

Sumner Shapiro

In The Matter Of V. Georges Hufnagel, M.D.

Robert M. Briber, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Hufnagel.

Dated : June 23 , 1998



Robert M. Briber