



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 1, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nicholas G. Scotto, M.D.
514K Georgia Avenue
Salisbury, Maryland 21801

Nicholas G. Scotto, M.D.
Peninsula Mental Health
102 W. Market Street
Salisbury, Maryland 21801

Fred Friedman, Esq.
36 West 44th Street
New York, New York 10036

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Nicholas G. Scotto, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-212) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

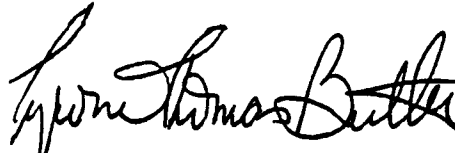
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyfone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyfone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC #00-212

**IN THE MATTER
OF
NICHOLAS G. SCOTTO, M.D.**

A Notice of Referral Proceeding and Statement of Charges, both dated, January 28, 2000, were served upon the Respondent, **NICHOLAS G. SCOTTO, M.D.**

SHARON KURITZKY, M.D., Chairperson, **LYON GREENBERG, M.D.** and **MR. PETER KOENIG**, duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on July 20, 2000, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **FRIEDMAN AND MANDAVIAN, P.C.** 36 West 44th Street, New York, New York, 10036, by **Fred Friedman, Esq.**, of Counsel.

Evidence was received and transcripts of these proceeding 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 case, 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

- 1) Nicholas G. Scotto, the Respondent
- 2) Frank W. Colligan, M.D., by telephone
- 3) Patricia Synder, R.N., LCSW-C, by telephone

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 the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise stated.

1. **NICHOLAS G. SCOTTO, M.D.**, the Respondent, was authorized to practice medicine in New York state on October 4, 1999, by the issuance of license number 187187 by the New York Education Department. (Pet's. Ex. 3).

2. On August 25, 1999, the Board of Physician Quality Assurance of the State of Maryland, (hereinafter "Maryland Board"), by a Consent Order, (hereinafter "Maryland Order"), reprimanded Respondent and required that he comply with fourteen (14) terms and conditions for a period of four (4) years. The terms and conditions included the requirement that the Respondent maintain his Physician's Rehabilitation Advocacy Contract; commence long term, intensive, dynamic, individual psychotherapy; attend support group programs; abstain from alcoholic use and drug abuse; and submit to random urinalysis/toxicology screens.

The action by the "Maryland Board" was based on the Respondent's improper prescribing of Xanax, Klonopin, Ritalin, and Aderall; seeing patients when he was under an agreement in regard to his outpatient treatment not to see patients; his abuse of and

addiction to Ritalin and Xanax; and the writing false prescriptions to obtain Ritalin. (Pet's Ex. 4).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct resulting in the Maryland Board's disciplinary action against the Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York state law:

- New York Education Law §6530(7) (practicing the profession while impaired);
- New York Education Law §6530(8) (being dependent on drugs)

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York State Education 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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by reason of having had disciplinary action taken against him after a disciplinary action was instituted by a duly authorized professional action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

On August 25, 1999, the State Board of Physician Quality Assurance of the State of the State of Maryland, by a Consent Order, reprimanded the Respondent and required that he comply with fourteen (14) terms and conditions for a period of four (4) years. The terms and conditions included the requirement that the Respondent maintain his Physician's Rehabilitation Advocacy Contract; commence long term, intensive, dynamic, individual psychotherapy; attend support group programs; abstain from alcoholic use and drug abuse; and submit to random urinalysis/toxicology screen.

The action by the "Maryland Board" was based on the Respondent's improper prescribing of Xanax, Klonopin, Ritalin, and Aderall; seeing patients when he was under an agreement in regard to his outpatient treatment not to see patients; his abuse of and addiction to Ritalin and Xanax; and the writing false prescriptions to obtain Ritalin.

The Respondent testified at the instant hearing. The Hearing Committee was impressed by his candor and sincerity, his admission of past mistakes and his efforts to rehabilitate himself.

The Respondent testified that following completion of a residency training program at the University of Connecticut, he began private practice and worked as Medical Director of Dorchester General Hospital. Due in part to physician shortage in the area as well as his desire to improve his professional standing and activities, he began to increase such activities to the point where his organizational skills were overwhelmed. This included not only private practice, but work as the Medical Director in several different facilities concurrently. In an effort to manage such activities and in the face of his Attention Deficit Disorder (ADD) symptoms he began to use both Ritalin and Xanax. He had developed a tolerance and dependence on Ritalin and began using it intranasally. He developed the signs and symptoms of substance dependency including continued use of Ritalin despite the detrimental effects on his professional, social and family life. The use of Ritalin is attributed to divorce and separation in 1997 from his wife of two years. In addition, his practice became bankrupt due to his inability to oversee its day-to-day operations. He also lost privileges at Dorchester General Hospital due to his erratic behavior.

In January of 1998 he voluntarily reported his substance use to the Maryland Med. Chi. (Physician Rehabilitation Committee of the Medical and Chirological Faculty of the State of Maryland) and began to work with Maryland BPQA (Board of Physician's Quality Assurance). He entered intensive inpatient rehab on January 19, 1998. Following completion of his rehab stay, he continued in intensive outpatient substance abuse treatment and eventually was referred to Randy Rummler, M.D. for medication management and psychotherapy. He has continued to be maintained on Wellbutrin and engaged in intensive psychotherapy on a weekly basis.

A report by Dr. Rummler confirms the Respondent's testimony. Dr. Rummler has also reported that there have been no signs or symptoms of relapse in terms of the Respondent's substance abuse. This has been maintained for a period of 2 ½ years, and verified through random urine drug screens as administered through Maryland Med. Chi. The Respondent has also been able, despite significant stressors including the divorce, bankruptcy and loss of previous professional standing, to resume a professional career in which he is functioning in an appropriate manner. He has been compliant with all requirements of his consent order and his prognosis for continued compliance and professional competency appears excellent. In addition, the Respondent practices in an area of physician shortage and his presence is appreciated by those seeking psychiatric treatment. (See Respondent's Ex. A)

Based on the circumstances of the case, the Hearing Committee determines that the Respondent should be placed on probation under terms and conditions as hereinafter specified in the Order and to require certain conditions should he decide to return to medical practice in New York.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is placed on probation for a period to coincide with the probation imposed by the State Board of Physician Quality Assurance of the State of Maryland.
 - a) The Respondent shall comply with all the terms and conditions of probation as prescribed by the State Board of Physician Quality Assurance of the State of Maryland.
 - b) The Respondent shall cause the Maryland Board to submit semi-annual reports to the Office of Professional Medical Conduct reporting on his compliance or failure to comply with any of the terms of his Maryland probation.
 - c) Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against the Respondent as may be authorized pursuant to the law.

2. If, at some future date, the Respondent chooses to return to medical practice in New York he must:
 - provide ninety days prior notice concerning his return to the Office of Professional Medical Conduct,
 - Respondent shall comply with any request from OPMC to obtain an independent

psychiatric/chemical dependency evaluation by a health care professional proposed by Respondent and approved, in writing, by the Director of OPMC.

- Respondent shall continue his enrollment in the Committee for Physicians' Health (CPH) and shall engage in a contract with CPH, which fully describes the terms, conditions and duration of a program to assist the Respondent in the rehabilitation of his impairment. Respondent shall fully comply with the contract.
- CPH shall report to OPMC if Respondent refuses to comply with the contract, refuses to submit to treatment or whose impairment is not substantially alleviated by treatment. CPH shall report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.

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

DATED: **New York**

7/28/2000


SHARON KURITZKY, M.D.
Chairperson

LYON GREENBERG, M.D.
MR. PETER KOENIG

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

**IN THE MATTER
OF
NICHOLAS G. SCOTTO, M.D.**

**NOTICE
OF
REFERRAL
PROCEEDING**

**TO: NICHOLAS G. SCOTTO, M.D.
514K Georgia Avenue
Salisbury, MD 21801**

**NICHOLAS G. SCOTTO, M.D.
Peninsula Mental Health
102 W. Market Street
Salisbury, MD 21801**

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of March, 2000 at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

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

State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, 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 March 14, 2000.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge or Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before March 14, 2000 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
January 28, 2000



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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518)402-0820

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

-----X

IN THE MATTER : STATEMENT
OF : OF
NICHOLAS G. SCOTTO, M.D. : CHARGES

-----X

NICHOLAS G. SCOTTO, M.D., the Respondent, was authorized to practice medicine in New York state on October 4, 1991, by the issuance of license number 187187 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 25, 1999, the State Board of Physician Quality Assurance of the State of Maryland, (hereinafter "Maryland Board"), by a Consent Order, (hereinafter "Maryland Order"), reprimanded Respondent and required that he comply with fourteen (14) terms and conditions for a period of four (4) years, to include that he maintain his Physicians Rehabilitation Advocacy Contract, commence long term, intensive, dynamic, individual psychotherapy, attend support group programs, abstain from alcoholic use and drug abuse, and submit to random urinalysis/toxicology screens, based on improper prescribing of Xanax, Klonopin, Ritalin, Aderall, seeing patients when he was under an agreement in regard to his out-patient treatment not to see patients, abuse of and addiction to Ritalin and Xanax, and the writing false prescriptions to obtain Ritalin.

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

1. New York Education Law §6530(7) (practicing the profession while impaired);
2. New York Education Law §6530(8) (being dependent on drugs);
3. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules or regulations); and/or
4. New York Education Law §6530(20) (moral unfitness).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education 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 the Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by reason of her having had disciplinary action taken against him after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

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

DATED: *Jan 28*, 2000
Albany, New York


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