



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Lorna McBarnette
Executive Deputy Commissioner

April 10, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza, 6th Floor
New York, New York 10001

Ivan M. Dochter, Esq.
888 Seventh Avenue
35th Floor
New York, New York 10022

Roger J. Fares, M.D.
28843-054 N.E. 238
P.R. 276, P.O. Box 1000
Loretto F.C.I.
Loretto, Pennsylvania 15940

RE: In the Matter of Roger J. Fares, M.D.

Dear Mr. Smith, Mr. Dochter and Dr. Fares:

Enclosed please find the Determination and Order of the Hearing Committee 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.

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.

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 of the Hearing Committee's Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to the New York State Department of Health, Bureau of Adjudication, Corning Tower - Room 2503, Empire State Plaza, Albany, New York 12237-0030, **Attention: James F. Horan, Esq., Administrative Law Judge.** 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.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler/crc".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X

IN THE MATTER :

OF :

ROGER J. FARES, M.D. :

ORDER
#BPMC 92-30

-----X

A Notice of Hearing and Statement of Charges, dated January 29, 1992 were issued by the State Board for Professional Medical conduct concerning the Respondent, Roger J. Fares , M.D. A hearing was held on March 5, 1992 at the Office of the New York State Department of Health, 5 Penn Plaza, New York, New York. **ARTHUR T. RISBROOK, M.D. (Chair), EDWARD C. ZAINO, M.D., and SHEILA M. ROTHMAN**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Respondent appeared by Ivan M. Dochter, Esq. The Department of Health appeared by David W. Smith, Esq., Assistant Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made. The Hearing Committee issued a Determination dated March 5, 1992.

IT IS HEREBY ORDERED BY THE COMMITTEE THAT:

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Ex. #1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED** for a period of two years,

effective immediately upon Respondent's release from prison. The last eighteen months of this suspension shall be stayed, with Respondent placed on probation for the same eighteen month period.

The terms of probation shall be as follows:

- a. Dr. Fares shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
- b. Dr. Fares shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
- c. Dr. Fares shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
- d. In the event that Dr. Fares leaves New York to reside or practice outside the State, Dr. Fares shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.
- e. Dr. Fares shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Fares' professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed. In addition, Dr. Fares' controlled substance prescribing practice may be reviewed.
- f. Dr. Fares shall maintain a legible written record of all controlled substances which he prescribes, dispenses or administers. This record shall indicate the name of the patient, the drug prescribed, dispensed or administered, including the amount,

strength and directions for use and the date on which the controlled substance was prescribed, dispensed or administered. This written record shall be distinct from, and in addition to, Dr. Fares' medical records for his patients.

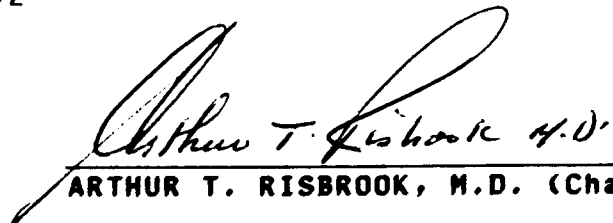
- g. Dr. Fares shall have quarterly meetings with a monitoring physician who shall review Dr. Fares' controlled substance prescribing practice. This monitoring physician shall review Dr. Fares' written record of controlled substances which have been prescribed, dispensed or administered and shall randomly review selected medical records and evaluate whether Dr. Fares' prescribing practice and medical care comport with generally accepted standards of medical practice. This monitoring physician shall be selected by Dr. Fares and is subject to the approval of the Director of the Office of Professional Medical Conduct. The monitoring physician shall submit quarterly reports to the Director of the Office of Professional Medical Conduct. Dr. Fares shall not practice medicine until an acceptable monitoring physician is approved by the Office.
- h. Dr. Fares shall complete at least fifty credit hours of Category I continuing medical education in internal medicine and/or family practice during the six month period of actual suspension. These credit hours shall be in courses, acceptable to the Office of Professional Medical Conduct, which include substantial discussion about the proper use of controlled substances. Dr. Fares shall submit written proof of successful completion of these courses to the Office. Dr. Fares shall not be permitted to practice until he has successfully completed such courses.
- i. Dr. Fares shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of non-compliance. These declarations shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.
- j. Dr. Fares shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Fares elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State

Education Department of that fact.

k. If there is full compliance with every term set forth herein, Dr. Fares may practice as a physician in New York in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Fares pursuant to New York Public Health Law §230(19) or any other applicable laws.

This Order shall be effective upon service on the Respondent by personal service or certified mail.

DATED: Albany, New York
March 5, 1992


ARTHUR T. RISBROOK, M.D. (Chair)

Edward C. Zaino, M.D.
Sheila M. Rothman

TO: David W. Smith, Esq.
Assistant Counsel
New York State Department of Health
5 Penn Plaza, 6th Floor
New York, New York 10001

Ivan M. Dochter, Esq.
888 Seventh Avenue
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New York, New York 10022

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

-----X
IN THE MATTER : DETERMINATION
: OF THE
: HEARING COMMITTEE
: X

A Notice of Hearing and Statement of Charges, both dated January 29, 1992, were served upon the Respondent, Roger J. Fares, M.D. ARTHUR T. RISBROOK, M.D (Chair), EDWARD C. ZAINO, M.D., and SHEILA M. ROTHMAN, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. A hearing was held on March 5, 1992. The Department of Health appeared by David W. Smith, Esq., Assistant Counsel. The Respondent appeared by Ivan M. Dochter, Esq. 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.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law § 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law § 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 §6530(9)(a)(ii) in connection with a criminal conviction under Federal law.

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. Roger J. Fares, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State by the issuance of license # 107653 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992 at 1016 Lexington Avenue, New York, New York 10021-4259. (Pet. Ex. #3).

2. On July 16, 1990, in United States District Court for the Southern District of New York, Respondent pleaded guilty to one count of distributing and dispensing Schedule III and Schedule IV controlled substances, in violation of 21 U.S.C. §§ 812, 841(a)(1) and 841(b)(2). Respondent was subsequently sentenced to eighteen months in prison. (Pet. Ex. #2).

3. In addition to the term of imprisonment for the criminal conviction, Respondent paid \$403,125 in satisfaction of a civil forfeiture proceeding brought by the United States pursuant to 18 U.S.C. Section 881. (Pet. Ex. #5).

4. During the period November, 1985 through October 16, 1989, Respondent, on several occasions, prescribed controlled substances without legitimate medical purpose. The controlled substances involved included Lotusate, Placidyl, Didrex, Valium, Duradyne, Ativan, Xanax, Darvon, and codeine products, including Tylenol with codeine. (Pet. Ex. #4).

5. Respondent provided testimony from four of his current patients. These patients testified in support of Respondent's continued practice of medicine. In addition, Respondent produced approximately 242 letters of support written by his patients. (Resp. Ex. A and B).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates that on July 16, 1990 Respondent pleaded guilty to one count of distributing and dispensing Schedule III and Schedule IV controlled substances, in violation of 21 U.S.C. §§812, 841(a)(1) and 841(b)(2). This constitutes a conviction of a crime under federal law.

The Hearing Committee unanimously concluded that Respondent committed professional misconduct within the meaning of Education Law §6530(9)(a)(ii), by virtue of this criminal conviction. As a result, the Hearing Committee sustained the specification of misconduct alleged in the Statement of Charges. (Pet. Ex. #1).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in the State of New York be suspended for a period of two years, effective immediately upon Respondent's release from prison. The last eighteen months of this suspension shall be stayed, with Respondent placed on probation for the same eighteen month period. The complete terms of probation are contained in Appendix A, which is attached to this Determination and incorporated herein. The Committee's determination as to the penalty to be imposed was reached after due consideration of the full spectrum of available penalties, including revocation, censure and reprimand, or the imposition of civil penalties of up to \$10,000 per specification of charges sustained.

Respondent admitted that on several occasions he prescribed controlled substances to patients without legitimate medical purpose, a clear violation of federal law. The controlled substances involved included Lotusate, Placidyl, Didrex, Valium, Duradyne, Ativan, Xanax, Darvon, and codeine

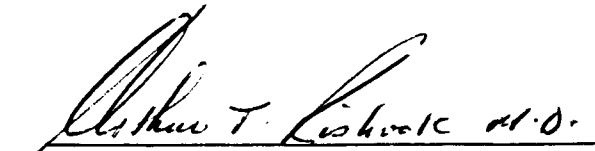
products, including Tylenol with codeine. Respondent's misconduct was serious, and warrants a significant penalty, one which is greater than a mere censure and reprimand.

The Hearing Committee took into consideration the fact that Respondent is currently serving a term of eighteen months imprisonment, and that Respondent paid \$403,125 in satisfaction of a civil forfeiture proceeding brought by the United States in connection with his criminal conduct. The Hearing Committee also considered the strong support for Respondent demonstrated by the four patients who testified on his behalf, as well as the 242 patients who wrote letters of support.

Respondent's conduct constituted a serious breach of trust. Nevertheless, it was the consensus of the Hearing Committee that revocation of his medical license was not warranted. Respondent has paid a stiff financial penalty and has been incarcerated for his conduct. The Committee believes this to be a sufficient deterrent to any similar misconduct by Respondent in the future. The strength of support amongst Respondent's patients indicates that it may be possible to rehabilitate Respondent. To that end, the terms of Respondent's probation include a requirement of re-education on the proper use of controlled substances, as well as monitoring of his controlled substance prescription practices, in the event that Respondent regains his DEA registration. The Hearing Committee believes that successful completion of these terms will enable Respondent to restore his medical practice to the appropriate clinical and

ethical standards expected of members of the profession.

DATED: Albany, New York
March 5, 1992


ARTHUR T. RISBROOK, M.D.

Edward C. Zaino, M.D.
Sheila M. Rothman

APPENDIX A
TERMS OF PROBATION

1. Dr. Fares shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Dr. Fares shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Fares shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
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5. Dr. Fares shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Fares' professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed. In addition, Dr. Fares' controlled substance prescribing practice may be reviewed.
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7. Dr. Fares shall have quarterly meetings with a

monitoring physician who shall review Dr. Fares' controlled substance prescribing practice. This monitoring physician shall review Dr. Fares' written record of controlled substances which have been prescribed, dispensed or administered and shall randomly review selected medical records and evaluate whether Dr. Fares' prescribing practice and medical care comport with generally accepted standards of medical practice. This monitoring physician shall be selected by Dr. Fares and is subject to the approval of the Director of the Office of Professional Medical Conduct. The monitoring physician shall submit quarterly reports to the Director of the Office of Professional Medical Conduct. Dr. Fares shall not practice medicine until an acceptable monitoring physician is approved by the Office.

8. Dr. Fares shall complete at least fifty credit hours of Category I continuing medical education in internal medicine and/or family practice during the six month period of actual suspension. These credit hours shall be in courses, acceptable to the Office of Professional Medical Conduct, which include substantial discussion about the proper use of controlled substances. Dr. Fares shall submit written proof of successful completion of these courses to the Office. Dr. Fares shall not be permitted to practice until he has successfully completed such courses.
9. Dr. Fares shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of non-compliance. These declarations shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.
10. Dr. Fares shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Fares elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.
11. If there is full compliance with every term set forth herein, Dr. Fares may practice as a physician in New York in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of

probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Fares pursuant to New York Public Health Law §230(19) or any other applicable laws.