



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Denis P. Walsh  
Executive Deputy Commissioner  
**PUBLIC**

July 7, 1999

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Margoles, M.D.  
177 San Ramon Drive  
San Jose, California 95111

Roy Nemerson, Esq.  
NYS Department of Health  
5 Penn Plaza – Sixth Floor  
New York, New York 10001

### **RE: In the Matter of Michael Margoles, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.99-155) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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.

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.

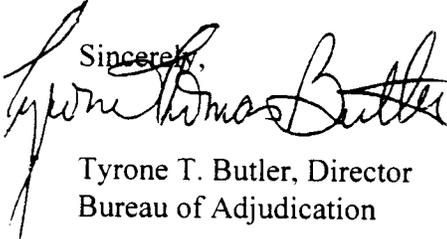
All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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,  
  
Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mla  
Enclosure

COPY

IN THE MATTER  
OF  
MICHAEL MARGOLES, M.D.

DETERMINATION  
AND  
ORDER

ORDER #99-155

A Commissioner's Order/Notice of Hearing, and a Statement of Charges, both dated June 14, 1999, were issued on written notice to the Respondent, **MICHAEL MARGOLES, M.D.**

**DONALD CHERR, M.D.**, Chairperson, **EDWARD SINNOTT, M.D.** and **NANCY J. MORRISON**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge served as the Administrative Officer.

A hearing was held on June 23, 1999 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 **ROY NEMERSON, ESQ.**, of Counsel.. The Respondent did not appear for the hearing.

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 (12)(a). 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)(d). A copy of the Commissioner's Order/Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.

## 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 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. **MICHAEL MARGOLES, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 17, 1970, by the issuance of license number 106615 by the New York State Education Department. (Pets'. Ex. 2)
2. By a Consent Order, effective May 3, 1999, the Respondent surrendered his California Medical License based upon his agreement not to contest the Fifty-Third and Fifty-Fourth "Causes for Discipline", set forth in an Accusation and four Supplemental Accusations. These two "Causes for Discipline" charge the Respondent with Gross Negligence, Self-administering of a Controlled Substance, Using a Controlled Substance in Such a Manner as to be Dangerous, Violation of drug Law, and Impaired Ability to Practice Medicine Due to Mental illness, and are based upon the Respondent's use of Dilaudid which he obtained from a patient or patients for whom he prescribed the drug.

Said Consent Order was preceded, on October 2, 1998, by an Interim Order of an Administrative Law Judge prohibiting the Respondent from the practice of medicine until proof of surrender of his Drug Enforcement Administration Permit. The Interim Order was based, in part, on a finding upon a preponderance of evidence reviewed, that the Respondent committed numerous violations of the (California) Medical Practices Act thereby placing Patient D.K.'s life and health in danger, and that permitting the Respondent to continue to practice medicine utilizing narcotics would endanger the public health, safety, or welfare (Pets'. Exs. 3-10).

3. On June 14, 1999, **DENNIS P. WHALEN**, Executive Deputy Commissioner, New York State Department of Health, issued a Commissioner's Order and Notice of Hearing which provided in part:

"The undersigned Dennis P. Whalen, Executive Deputy Commissioner, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by **MICHAEL MARGOLES, M.D.**, the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

**ORDERED**, pursuant N.Y. Pub. Health Law §230(12) (McKinney Supp. 1999), that effective immediately **MICHAEL MARGOLES, M.D.**, Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12) (McKinney Supp. 1999).

**PLEASE TAKE NOTICE** that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1999), and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1999). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on June 23, 1999, at 10:00 a.m., at the offices of the New York state Health Department, Division of Legal Affairs, Hedley Park Place, 433 River Street, 6<sup>th</sup> Floor, Troy, New York 12180-2299." (Pet's. Ex. 1)

#### HEARING COMMITTEE CONCLUSION

The Hearing Committee concludes that the conduct which resulted in the California Board's disciplinary action against the Respondent would, if committed in New York State,

constitute professional misconduct under the laws of New York State, specifically N.Y. Educ. Law §6530(3), (4), (5), (6), (7) and (8).

**VOTE OF THE HEARING COMMITTEE**

**SPECIFICATION OF CHARGES**

**HAVING HAD DISCIPLINARY ACTION TAKEN**

The Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1999) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her 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 the 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(3), (4), (5), (6), (7), and/or (8).

VOTE: Sustained (3-10)

**DETERMINATION OF THE HEARING COMMITTEE**

The Respondent surrendered his California Medical License pursuant to a Consent Order, effective May 3, 1993, wherein he agreed not to contest charges against him of Gross Negligence, Self-administering of a Controlled Substance, Using a Controlled Substance in

Such a Manner as to be Dangerous, Violation of drug Law, and impaired Ability to Practice Medicine due to Mental Illness. The charged were based on the Respondent's use of Dilaudid, which he obtained from a patient or patients for whom he prescribed the drug.

Said Consent Order was preceded, by an October 2, 1998, Interim Order of an Administrative Law Judge prohibiting the Respondent from the practice of medicine until proof of surrender of his Drug Enforcement Administration Permit. The Administrative Law Judge found that permitting the Respondent to continue to practice medicine utilizing narcotics would endanger the public, safety, or welfare.

Based on evidence in the California case and the disciplinary action taken by California Medical Board, the Hearing Committee determines that Respondent's license to practice medicine in the State of New York should be **REVOKED**.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.
2. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATE: Rochester, New York

July 6, 1999



DONALD CHERR, M.D.  
CHAIRMAN

EDWARD SINNOTT, M.D.:  
NANCY J. MORRISON

## **Appendix 1**

IN THE MATTER  
OF  
MICHAEL MARGOLES, M.D.

STATEMENT  
OF  
CHARGES

MICHAEL MARGOLES, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 17, 1970, by the issuance of license number 106615 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. By a Consent Order effective May 3, 1999, Respondent surrendered his California Medical License based upon his agreement not to contest the Fifty-Third and Fifty-Fourth Causes for Discipline, set forth in an Accusation and four Supplemental Accusations. These two Causes for Discipline charge Gross Negligence, Self-administering of a Controlled Substance, Using a Controlled Substance in Such a Manner as to be Dangerous, Violation of Drug Law, and impaired ability to practice medicine due to Mental Illness, and are based upon Respondent's use of Dilaudid, which he obtained from a patient or patients for whom he prescribed the drug. Said Consent Order was preceded, October 2, 1998, by an Interim Order of an Administrative Law Judge prohibiting Respondent from the practice of medicine until proof of surrender of his Drug Enforcement Administration Permit. Said Interim Order was based, in part, on a finding upon a preponderance of evidence reviewed, that Respondent committed numerous violations of the (California) Medical Practices Act thereby placing Patient D.K.'s life and health in danger, and that permitting Respondent to continue to practice medicine utilizing narcotics

would endanger the public health, safety, or welfare. As of May 27, 1999, Respondent had not surrendered his DEA permit.

**SPECIFICATION OF CHARGES**  
**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1999) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her 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 the 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(3),(4),(5),(6),(7),and/or(8)) as alleged in the facts of the following:

1. Paragraph A.

DATED: June 14, 1999  
New York, New York



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

IN THE MATTER  
OF  
MICHAEL MARGOLES, M.D.

COMMISSIONER'S  
ORDER AND  
NOTICE OF  
HEARING

**PUBLIC**

TO: MICHAEL MARGOLES, M.D.  
177 San Ramon Drive  
San Jose, CA 95111

The undersigned, Dennis P. Whalen, Executive Deputy Commissioner, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by MICHAEL MARGOLES, M.D., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12) (McKinney Supp. 1999), that effective immediately MICHAEL MARGOLES, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12) (McKinney Supp. 1999).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1999), and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1999). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on June 23, 1999, at 10:00 a.m., at the offices of the New York State Health Department, Division of Legal Affairs, Hedley

D1

Park Place, 433 River Street, 6th Floor, Troy, New York 12180-2299, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of

the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a (McKinney Supp. 1999). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
June 14, 1999

  
Dennis P. Whalen  
Executive Deputy Commissioner  
New York State Health Department

Inquiries should be directed to:

Roy Nemerson  
Deputy Counsel  
N.Y.S. Department of Health  
Division of Legal Affairs  
5 Penn Plaza  
Suite 601  
New York, New York 10001  
(212) - 613-2615

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

IN THE MATTER  
OF  
MICHAEL MARGOLES, M.D.

STATEMENT  
OF  
CHARGES

MICHAEL MARGOLES, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 17, 1970, by the issuance of license number 106615 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. By a Consent Order effective May 3, 1999 Respondent surrendered his California Medical License based upon his agreement not to contest the Fifty-Third and Fifty-Fourth Causes for Discipline, set forth in an Accusation and four Supplemental Accusations. These two Causes for Discipline charge Gross Negligence, Self-administering of a Controlled Substance, Using a Controlled Substance in Such a Manner as to be Dangerous, Violation of Drug Law, and impaired ability to practice medicine due to Mental Illness, and are based upon Respondent's use of Dilaudid, which he obtained from a patient or patients for whom he prescribed the drug. Said Consent Order was preceded, October 2, 1998, by an Interim Order of an Administrative Law Judge prohibiting Respondent from the practice of medicine until proof of surrender of his Drug Enforcement Administration Permit. Said Interim Order was based, in part, on a finding upon a preponderance of evidence reviewed, that Respondent committed numerous violations of the (California) Medical Practices Act thereby placing Patient D.K.'s life and health in danger, and that permitting Respondent to continue to practice medicine utilizing narcotics

would endanger the public health, safety, or welfare. As of May 27, 1999, Respondent had not surrendered his DEA permit.

**SPECIFICATION OF CHARGES**  
**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1999) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her 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 the 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(3),(4),(5),(6),(7),and/or(8)) as alleged in the facts of the following:

1. Paragraph A.

DATED: June 14, 1999  
New York, New York

