



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

February 8, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237-0032

James E. Dering, Esq.
102 Hackett Boulevard
Albany, New York 12209

Naim S. Bashir, M.D.
7357 Ticonderoga Road N.E.
Albuquerque, New Mexico 87109

RE: In the Matter of Naim S. Bashir, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-36) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

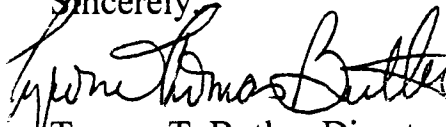
James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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

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

COPY

**IN THE MATTER
OF
NAIM S. BASHIR, M.D.**

**DETERMINATION
AND
ORDER
FOLLOWING REMAND
BPMC # 00-36**

A Notice of Hearing and Statement of Charges, both dated October 7, 1998, were served upon the Respondent, **NAIM S. BASHIR, M.D. JOHN B. WALDMAN, M.D.** (Chairperson), **NANCY J. STUBBE, M.D.** and **KAREN WOLF, R.P.A.**, 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. **JEFFREY ARMON**, Administrative Law Judge, served as the Administrative Officer. A hearing following remand by the Administrative Review Board (ARB) was held on January 7, 2000. The Department of Health appeared by **HENRY M. GREENBERG**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared and was represented by **JAMES E. DERING, 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 and Order.

PROCEDURAL HISTORY

A hearing on this matter was first held on November 3, 1998. At that proceeding, the Administrative Law Judge (ALJ) determined that the Florida Final Order, Consent Agreement and Administrative Complaint were inadmissible because no improper conduct that led to the disciplinary action taken by the Florida Board had been established. As a result, the Committee did not sustain the

Specification of professional misconduct and dismissed the Charges. (BPMC-98-304; hereinafter referred to as Ex. 5) The Administrative Review Board reversed this determination (ARB. No 98-304; hereinafter referred to as Ex. 6) and remanded the matter to the Committee for further proceedings. The Committee was instructed that it may consider the Florida Order, Consent Agreement, and if applicable, Administrative Complaint. Subsequently, the ALJ submitted a Memorandum in response to the Remand Order (ALJ Ex. 1) which requested that the ARB reconsider its decision to reverse the determination to exclude the Florida documents. This request was denied by the ARB on or about September 10, 1999. (ARB No. 98-304A; hereinafter ALJ Ex. 2)

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent was charged with professional misconduct pursuant to Education Law Section 6530(9)(b). The Administrative Law Judge granted the Department's motion to amend the Charges to clarify that it was proceeding pursuant to Education Law § 6530 (9)(d) and not 6530(9)(b). A copy of the Statement of Charges (Ex.1) is attached to this Determination and Order as Appendix II.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent was authorized to practice medicine in New York State on March 8, 1989 by the issuance of license number 177596 by the New York State Education Department. (Ex.2)

2. The Florida Board of Medicine issued a Final Order dated April 29, 1998 which adapted a Consent Agreement entered into between Respondent and the Florida Department of Health on or about March 4, 1998 and which included requirements that Respondent remain in compliance with the Physician Recovery Network (PRN) as long as he holds a license to practice medicine in Florida and further that he submit a practice plan for approval by the Florida Board prior to his reentry to medical practice. Attached to said Consent Agreement as Exhibit A was a copy of an Administrative Complaint which alleged that Respondent violated Chapter 458.331(1)(s) and (x), Florida Statutes. Respondent neither admitted nor denied the allegations of fact contained in the Complaint. (Ex. 3)

3. The Administrative Complaint alleged two violations of Florida law:
 - a. Respondent was unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition, and;

- b. Respondent violated any provision of Chapter 458, Florida Statutes, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing based on a failure to have on file with the Florida Department of Health, the address of his primary place of practice in Florida prior to engaging in that practice. (Ex. 3)

CONCLUSIONS OF LAW

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

The Hearing Committee determined that the Department had met its burden of proof by concluding that the preponderance of the evidence demonstrated that Respondent was disciplined for conduct which, had it occurred in New York, would have constituted professional misconduct pursuant to New York Education Law Sections 6530(7) [practicing the profession while impaired] and/or 6530(29) [violating any term of probation or condition or limitation imposed on the licensee]. The Hearing Committee rejected contentions made by Respondent that the misconduct found by the Florida Board pursuant to Florida statute would not have constituted professional misconduct under New York law and therefore determined to sustain the Specification set out in the Statement of Charges (Ex.1).

DISCUSSION AND DETERMINATION OF PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined that Respondent's license to practice medicine in New York should be suspended for five years, said suspension to be stayed, and that he be placed on probation in accordance with the Terms of Probation as set forth in Appendix I during said period of stayed suspension. Imposition of this penalty shall be tolled

until such time as Respondent resumes a medical practice in New York state. This decision was made following due consideration of the full spectrum of penalties available pursuant to statute, including license revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent testified that he had been diagnosed with bipolar disorder and that he had not suffered additional psychotic episodes since appropriate medication had been prescribed for him. Respondent is currently an Assistant Professor in pediatrics at the University of New Mexico Health Sciences Center. Testimony was received from his current supervisor and from his monitoring psychiatrist, each of whom indicated that the Respondent was being fully compliant with his plan of treatment and that he was performing well in his practice. The Hearing Committee reached the conclusion that, in the event Respondent was to return to New York to resume a medical practice, the safety of the public would be adequately protected as long as he continued to comply with recommended plans of treatment of his condition. The requirements set out in the Terms of Probation were imposed to ensure Respondent's compliance.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification contained within the Statement of Charges (Ex. 1) is **SUSTAINED**
and

2. The license of Respondent to practice medicine in New York State be hereby **SUSPENDED** for a period of five years, said suspension to be **STAYED**; and

3. Respondent shall be placed on **PROBATION** during the period of the stayed suspension of his license, and he shall comply with all terms of probation as set forth in Appendix I, attached hereto and made a part of this Determination and Order.

4. 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: Troy, New York

Feb 4, 2000



JOHN B. WALDMAN, M.D. (Chairperson)

**NANCY STUBBE, M.D.
KAREN WOLFE, R.P.A.**

To: Robert Bogan, Esq.
NYS Department of Health
Corning Tower, Room 2503
Empire State Plaza
Albany, New York 12237-0032

James E. Dering Esq.
102 Hackett Boulevard
Albany, New York 12209

Naim S. Bashir, M.D.
7357 Ticonderoga Road N.E.
Albuquerque, New Mexico 87109

APPENDIX I

Terms of Probation

1. Respondent 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 and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. Prior to the commencement of a medical practice in New York state, Respondent shall submit to an examination by a psychiatrist, approved in advance by the Director of OPMC. The results of such examination shall be provided by the examining psychiatrist to OPMC and Respondent shall comply with any recommendations, including plans of treatment, which may be set out in the report of said psychiatrist.

8. Respondent shall practice medicine only when supervised in his medical practice:

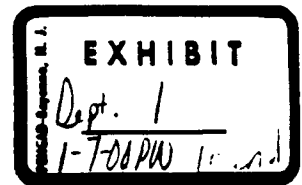
a. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. The practice supervisor shall be proposed by Respondent and subject to the written approval of the Director. The practice supervisor shall not be a family member or personal friend, or be in a professional relationship which could pose a conflict with supervision responsibilities.

b. Respondent shall ensure that the practice supervisor is familiar with the Order and terms of probation, and willing to report to OPMC. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.

c. Respondent shall authorize the practice supervisor to have access to his patient records and to submit biannual written reports, to the Director of OPMC, regarding Respondent's practice. These narrative reports shall address all aspects Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, time and attendance, the supervisor's assessment of patient records selected for review and other such on-duty conduct as the supervisor deems appropriate to report.

APPENDIX II

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. 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 Respondent as may be authorized pursuant to the law.



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

-----X

IN THE MATTER : STATEMENT
OF : OF
NAIM S. BASHIR, M.D. : CHARGES

-----X

NAIM S. BASHIR, M.D., the Respondent, was authorized to practice medicine in New York State on March 8, 1989 by the issuance of license number 177596 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. A Final Order from the State of Florida, Board of Medicine (hereinafter "Florida Board") dated April 29, 1998 adopted a Consent Agreement dated March 4 and 5, 1998, entered into by the Respondent and the Florida Department of Health, with amendments, to include that the Respondent remain in compliance with the Physician Recovery Network (PRN) as long as he holds a license to practice medicine in the State of Florida and that prior to Respondent's reentry to medical practice he submit a practice plan for approval by the Florida Board.

B. The Consent Agreement referenced to in Paragraph A above contained among other matters that 1) Respondent will not violate Chapters 455, 458, and 893 of the Florida Statutes; 2) Respondent be fined \$1,000.00; and 3) Respondent participate and comply with the PRN.

C. The Consent Agreement referenced herein paragraph A and B above was "executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause."

D. The Consent Agreement referred to in paragraphs A, B, and C above was predicated upon an Administrative Complaint dated December 17, 1997 which charged, in part, that the Respondent:

1. on or around October 13, 1996 was employed as a Pediatric Pulmonologist for Sacred Heart Hospital in Pensacola, Florida;
2. on or around October 13, 1996 made a trip to his native country Pakistan;
3. on or around October 22, 1996 while in Pakistan, was involuntarily hospitalized until October 28, 1996 for what was reported as an acute psychotic episode;
4. upon his return to his practice in Florida PRN consultants arranged for him to have a psychiatric evaluation by a psychologist and a psychiatrist;
5. on or about November 19, 1996 was diagnosed by the psychiatrist as possibly suffering from bipolar illness in that he had experienced a full-blown manic episode with psychotic features. The psychiatrist felt it appropriate for the Respondent to be closely monitored for further psychiatric symptoms;
6. on or about December 4, 1996 was evaluated by a psychologist who surmised that the Respondent suffered a brief psychotic disorder and that his overall personality make-up included obsessive compulsive, avoidant, and schizotypal features. The psychologist recommended individual psychotherapy and psychiatric follow-up.
7. on or about December 18, 1996 was evaluated by a physician who recommended that Respondent sign a PRN contract and participate for at least one (1) year for monitoring. If Respondent was shown to have a bipolar diagnosis than participation was recommended for up to five (5) years;

8. on or about December 18, 1998 signed a specialized PRN contract which contained many requirements and was to be reviewed at the end of one year;
9. on or about August 20, 1997 was reported by the PRN to have suffered a recurrent psychotic break and was not capable of practicing medicine. All attempts by PRN to contact Respondent or his family had failed;
10. on or about November 20, 1997 was reported as "unable to practice medicine with reasonable skill and safety and consequently poses a threat to the safety, health and welfare of the public because of his failure to follow-through with treatment for a psychotic break and a subsequent recurrent psychotic break" by the PRN; and
11. violated Sections 458.331(1)(s) and (x) of Florida Statutes "in that he is unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition" and he "failed to have on file with the Department the address of his primary place of practice within the state prior to engaging in that practice in violation of Section 458.319 (3)," in that he violated any provision of this chapter," (458.331(1)(x)) "a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department."

E. The conduct resulting in the Florida 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. N.Y. Education Law Section 6530(7) [practicing the profession while impaired]; and/or
2. N.Y. Education Law Section 6530(29) [violating any term of probation or condition or limitation imposed on the licensee].

SPECIFICATION

Respondent is guilty of violating N.Y. 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 could, if committed in New York State, constitute professional misconduct under the laws of New York State, in that the Petitioner charges the following:

1. The facts in paragraphs A, B, C, D and/or E.

DATED: *October 7*, 1998

Albany, New York

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