

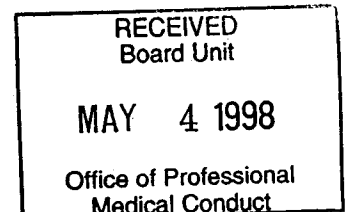


STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

May 4, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Valerie B. Donovan, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Kumaralingam Nagalingam, M.D.
Inmate # 05488-032
Federal Medical Center
3301 Leestown Road
Lexington, Kentucky 40511

RE: In the Matter of Kumaralingam Nagalingam, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-79) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is fluid and cursive, with the first name "Tyrone" being more prominent.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

**IN THE MATTER
OF**

KUMARALINGAM NAGALINGAM, M.D.

**DETERMINATION
AND
ORDER**

BPMC-98-79

A Notice of Hearing and Statement of Charges, each dated March 16, 1998, was served upon the Respondent, ~~KUMARALINGAM~~ **NAGALINGAM, M.D. JOSEPH GEARY, M.D.,** (Chairperson), **DATTA G. WAGLE, M.D.** and **SISTER MARY THERESA MURPHY,** 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 was held on April 21, 1998. The Department of Health appeared by **HENRY M. GREENBERG,** General Counsel, by **VALERIE B. DONAVAN,** Esq., of Counsel. The Respondent did not appear and was unrepresented, but submitted documents on his behalf. Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

The 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 is charged with professional misconduct pursuant to Education Law Sections 6530(9)(a) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix 1.

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.

1. Kumaralingam Nagalingam, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on or about July 23, 1990 by the issuance of license number 183159 by the New York State Education Department. (Ex. 3)
2. On August 21, 1997, the Kentucky State Board of Medical Licensure executed an Emergency Order of Suspension by which Respondent's license to practice medicine was suspended on the basis of a finding that there was probable cause to believe that Respondent's

practice violated Kentucky Rev. Stat. Sections 311.595(4), (9), (10), and (11) and that such medical practice constituted a danger to the health, welfare and safety of his patients or the general public. (Ex. 7, pp. 25-9)

3. The Kentucky Board made findings that a female office worker had reported that Respondent had sexually abused her, that such employee had reported that Respondent had performed diagnostic tests which were not indicated, had billed for such tests when the equipment was broken, had up-coded office visits, required untrained office personnel to administer and read Holter Monitor tests, had performed spirometry tests on multiple patients without changing the mouthpiece, had office personnel obtain sample drugs for the purpose of re-packaging and re-selling them to patients, had instructed office personnel to encourage patients to obtain their medications from Respondent and used the same pelvic stimulator on multiple patients without sterilizing it after each use.
(Ex. 7, pp. 25-9)
4. The Kentucky Board made additional findings that a federal grand jury had convicted Respondent of 123 counts of Medicare fraud and selling sample drugs and that his hospital privileges had been suspended based on his felony convictions. (Ex. 7, pp. 25-9)
5. In an Amended Judgement in a Criminal Case, dated November 6, 1997, the United States District Court for the Eastern District of Kentucky found Respondent guilty of ninety-five counts of selling sample prescription drugs and twenty-eight counts of mail fraud. Respondent was sentenced to fifteen months in jail and restitution, plus additional monetary penalties imposed by the Court. (Ex. 4)
6. Respondent was personally served with the Notice of Hearing and Statement of Charges on March 19, 1998. (Ex. 2)

CONCLUSIONS

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 determined that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Respondent had been convicted of committing an act constituting a crime under federal law and, in addition, that the Kentucky Board of Medical Licensure had taken disciplinary action against Respondent's license to practice medicine in that State. The basis for such action was conduct which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law Section 6530(2) [practice of the profession fraudulently]; 6530(3) [practice of the profession with negligence on more than one occasion]; 6530(5) [practice of the profession with incompetence on more than one occasion]; 6530(9)(a)(ii) [having been convicted of an act constituting a crime under federal law]; 6530(20) [conduct in the practice of medicine which evidences moral unfitness]; and 6530(21) [willfully making or filing a false report]. The Hearing Committee voted to sustain the Specifications of professional misconduct contained within the Statement of Charges.

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 New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.


The Committee observed from the documents submitted by Respondent that he continued to deny having committed acts of professional misconduct despite having been found guilty, following a jury trial, of ninety-five counts of selling sample prescription drugs and twenty-eight counts of mail fraud. No evidence was presented by Respondent in his written submissions which served to mitigate the seriousness of having been found guilty of violations of federal law directly related to the practice of medicine. The Committee also considered the statement by Department's counsel that the Kentucky Board had recently acted to revoke Respondent's license to practice medicine in that state. It was concluded that revocation of the license to practice medicine in New York was the only appropriate penalty under the circumstances of this case.

ORDER

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

1. The specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit 1) are **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**;
3. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

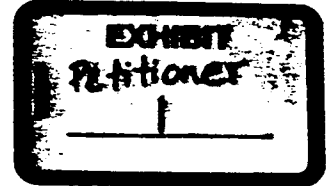
DATED: Albany, New York
4/29, 1998


JOSEPH GEARY, M.D. (Chair)
DATTA WAGLE, M.D.
SR. MARY THERESA MURPHY

TO: Valerie B. Donovan, Esq.
Division of Legal Affairs
NYS Department of Health
Corning Tower- Room 2509
Albany, New York 12237-0032

Kumaralingam Nagalingam, M.D.
Inmate # 05488-032
Federal Medical Center
3301 Leestown Road
Lexington, Kentucky 40511

APPENDIX I



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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
KUMARALINGAM NAGALINGAM, M.D. : PROCEEDING

-----X

TO: KUMARALINGAM NAGALINGAM, M.D.
Federal Medical Center
Inmate # 05488-032
3301 Leestown Road
Lexington, Kentucky 40511

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 21st day of April, 1998 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 may be offered which would show that the conviction would not be a crime in New York 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 April 10, 1998.

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 April 11, 1998 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
March 16, 1998

Peter D. Van Buren

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

Inquiries should be addressed to:

Valerie B. Donovan, Esq.
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2503
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
KUMARALINGAM NAGALINGAM, M.D. : CHARGES

-----X

KUMARALINGAM NAGALINGAM, M.D., the Respondent, was authorized to practice medicine in New York State on July 23, 1990, by the issuance of license number 183159 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. On August 21, 1997, the Commonwealth of Kentucky, State Board of Medical Licensure executed an Emergency Order suspending Respondent's license on the grounds that there was probable cause to believe that Dr. Nagalingam's practice violated Kentucky Revised Statutes (KRS) §§ 311.595(4), (9), (10) and (11) and that the medical practice constituted a danger to the health, welfare, and safety of his patients or the general public.

B. More specifically, in the above mentioned Emergency Order of Suspension, the Board found that: (1) a female office employee reported that she was sexually abused by the Respondent (2) this employee informed the Board that the Respondent had

ordered EKG's which were not indicated, billed for EKG's when the machine was broken, up-coded office visits, required office personnel to administer and read Holter Monitor tests when they did not have appropriate training to do so, performed spirometry tests on five different patients without changing the mouthpiece, had office personnel obtain sample drugs so that he could re-package them and re-sell them to patients, instructed office personnel to encourage patients to obtain their medication from Respondent, and used the same pelvic stimulator on different patients without sterilizing it after each use; (3) a federal grand jury convicted Respondent of 123 counts of Medicare fraud and selling sample drugs; and (4) Respondent's Hospital privileges were suspended based upon his felony convictions. The Board stated that there was probable cause to believe that Respondent violated KRS §§311.595(4) [committed a felony under the laws of the United States], (9) [engaged in unethical conduct likely to deceive, defraud or harm the public], (10) [knowingly made a false statement in a document executed in connection with his profession] and (21) [was suspended or disciplined by a hospital for what the hospital found to be unprofessional conduct].

C. In an Amended Judgment in a Criminal Case, dated November 6, 1997, the United States District Court for the Eastern District of Kentucky found Respondent guilty of ninety-five counts of selling sample prescription drugs and twenty-eight counts of mail fraud. Respondent was sentenced to fifteen months in jail and restitution in the amount of \$7,501.00. Other

monetary penalties imposed by the Court included an assessment of \$6,150.00 and a fine of \$10,000.

D. The conduct which Respondent was disciplined for in Kentucky would, if committed in New York State, constitute professional misconduct, namely: practicing the profession fraudulently, N.Y. Educ. Law. § 6530(2); negligence on more than one occasion, N.Y. Educ. Law § 6530(3); practicing the profession with incompetence on more than one occasion, N.Y. Educ. Law § 6530(5); being convicted of committing a felony under federal law, N.Y. Educ. Law § 6530(9)(ii); conduct in the practice of medicine which evidences moral unfitness, N.Y. Educ. Law § 6530(20); and willfully making or filing a false report required by law, N.Y. Educ. Law § 6530(21) .

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

CRIMINAL CONVICTION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(ii) by reason of having been convicted of a felony in Federal Court. Such conduct, had it been committed in New York State, would constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in paragraphs C and D.


SECOND SPECIFICATION

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9)(d) in that he had disciplinary action taken against him 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 Petitioner charges:

1. The facts of paragraphs A, B and D.

DATED: *March 16*, 1998
Albany, New York


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