



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

July 31, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kumaralingam Nagalingam, M.D.
Inmate #05488-032
Federal Medical Center
P.O. Box 14509
3301 Leestown Road
Lexington, Kentucky 40511

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

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

Dear Dr. Nagalingam and Ms. Donovan:

Enclosed please find the Determination and Order (No. 98-79) of the Professional Medical Conduct Administrative Review Board 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.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler" followed by a stylized flourish or initials.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:lcc

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

COPY

In The Matter Of

Kumaralingam Nagalingam, M.D. (Respondent)

**Administrative Review
Board (ARB)
Determination and
Order 98 - 79**

**Proceeding to review a Determination by a Hearing Committee (Committee)
from Board for Professional Medical Conduct (BPMC)**

**Before Board Members : Briber, Grossman, Lynch, Price & Shapiro.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

**For the Respondent: The Respondent represented himself.
For the Petitioner: Valerie B. Donovan, Esq.**

In this proceeding, pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1998), the ARB considers what action to take against the Respondent's License to practice medicine in New York State (License), following the Respondent's Federal criminal conviction for selling prescription drug samples and for mail fraud. After a hearing below, a BPMC Committee voted to revoke the Respondent's License, due to the Respondent's criminal conviction and due to disciplinary action against the Respondent in a proceeding before the Kentucky Board for Medical Licensure (Kentucky Board). The Respondent challenges the Committee's Determination, alleging error in 1.) proceeding with the hearing in his absence, 2.) relying on findings from a non-final decision by the Kentucky Board and 3.) considering a penalty for the Respondent's criminal conduct while the Respondent appeals his criminal conviction. After reviewing the hearing record and considering the parties' submissions, the ARB rejects the Respondent's challenges to the Hearing Committee's Determination and we affirm the Committee's penalty, revoking the Respondent's License.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated a.) N. Y. Educ. Law § 6530(9)(ii) (McKinney Supp. 1998), due to the Respondent's conviction for a crime under Federal law and b.) N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 1998), because the Kentucky Board took disciplinary action against the Respondent for conduct that would constitute misconduct under New York Law, if the Respondent had committed such conduct here. The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's Kentucky conduct, would constitute misconduct in New York, under the following

categories:

- practicing fraudulently, a violation under N. Y. Educ. Law § 6530(2) (McKinney Supp. 1998),
- practicing with negligence on more than one occasion, a violation under N. Y. Educ. Law § 6530(3) (McKinney Supp. 1998);
- practicing with incompetence on more than one occasion, a violation under N. Y. Educ. Law § 6530(4) (McKinney Supp. 1998);
- being convicted for a crime under Federal law, a violation under N. Y. Educ. Law § 6530(9)(ii) (McKinney Supp. 1998);
- committing conduct in medical practice that evidences moral unfitness, a violation under N. Y. Educ. Law § 6530(20) (McKinney Supp. 1998); and,
- willfully making or filing a false report, a violation under N. Y. Educ. Law § 6530(21) (McKinney Supp. 1998),

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p) (McKinney Supp. 1998), before a BPMC Committee. In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). The Respondent objected to the hearing proceeding, because he was unable to attend, due to incarceration on the Federal conviction. The Committee proceeded with the hearing in the Respondent's absence, but considered documents that the Respondent submitted in his defense. The Committee subsequently rendered the Determination which the ARB now reviews.

On the allegations concerning the criminal charges, the Committee determined that the United States District Court for the Eastern District of Kentucky found the Respondent guilty on ninety-five counts for selling sample prescription drugs and twenty-eight counts for mail fraud. The Court sentenced the Respondent to fifteen months incarceration, ordered the Respondent to pay restitution and imposed additional monetary penalties. The Committee concluded that the Respondent's criminal activity amounted to professional misconduct under N. Y. Educ. Law § 6530(9)(ii) (McKinney Supp. 1998).

On the charges concerning the Kentucky Board proceeding, the Committee found that the Kentucky Board executed an Emergency Order suspending the Respondent's Kentucky License, upon probable cause finding that the Respondent constituted a danger to his patients' and the general public's health, welfare and safety. The Kentucky Board made findings that a female office worker made sexual abuse allegations against the Respondent and that the office worker made allegations that the Respondent:

- performed diagnostic tests without indication,
- billed for such tests with broken equipment,
- up-coded office visits,
- required untrained office personnel to administer and read Holter Monitor tests,
- performed spirometry tests on multiple patients without changing the mouthpiece,
- required office personnel to obtain drug samples for re-packaging and re-sale to patients,
- instructed office personnel to encourage patients to obtain medications from the Respondent, and,
- used the same pelvic stimulator on multiple patients without sterilization after use.

The Kentucky Board also made findings concerning the Respondent's Federal convictions and his suspensions from his hospital privileges due to those convictions. The Respondent defaulted in answering the charges and that default constituted an admission under the Kentucky Medical Practice Act [KRS 311.591(4); Petitioner Exhibit 7 - Motion for Default Ruling]. The Committee concluded that the Respondent had committed misconduct under N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 1998), because the Kentucky Board disciplined the Respondent for conduct that would amount to misconduct under New York Law, under the following categories: practicing fraudulently, practicing with incompetence on more than one occasion, practicing with negligence on more than one occasion, being convicted for a Federal crime, wilfully making or filing a false report and committing conduct in medical practice that evidences moral unfitness.

Upon sustaining the misconduct charges, the Committee voted to revoke the Respondent's License. The Committee noted that the Respondent's submissions to the Committee denied any misconduct, despite the criminal convictions. The Committee found no evidence in the record in

mitigation. The Committee rendered their Determination on May 4, 1998. This review followed.

Review History and Issues

This proceeding commenced on May 15, 1998 when the ARB received the Petitioner's Notice requesting a Review. At the time the Respondent filed his Notice, he requested an extension for the time for filing briefs, until August or September, 1998, until the United States Court of Appeals For the Sixth Circuit had issued a decision in the Respondent's appeal to his criminal conviction. The ARB rejected the request through a June 1, 1998 letter to the parties from our Administrative Officer. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's brief and reply brief. The record closed when the ARB received the Petitioner's reply brief on July 9, 1998.

The Respondent asks that the ARB reconsider the time extension request due to the Respondent's extreme hardship, from his incarceration. The Respondent alleges that the Committee erred in considering a non-final Order by the Kentucky Board. The Respondent states that the Kentucky Board revoked his License effective on June 2, 1998, well after the Committee's Determination. The Respondent alleges that the Committee erred further in considering the charges arising from his criminal conviction, because the Respondent has appealed the conviction. The Respondent also contends that the Committee acted arbitrarily, by conducting an expedited proceeding against his inactive License. The Respondent requests an extension in the proceedings until his release from incarceration, to present evidence and give testimony.

The Petitioner urges the ARB to sustain the Committee's Determination. In response to the Respondent's legal challenges to the Committee's Determination, the Petitioner argues that:

- New York Courts have sustained disciplinary actions against professional licensees, arising from criminal convictions, with the underlying criminal conviction pending appeal, Matter of John Mitchell 40 N.Y.2d 153 (1976); Matter of Paiano, Sobol 175 A.D.2d 367, ___ N.Y.S.2d ___ (Third Dept. 1991), and

- the Committee based their findings on the Kentucky action on the Kentucky Board's Emergency Order of Suspension.

The Petitioner asks the ARB to reject the Respondent's renewed request for an extension, arguing that the Respondent used such extension requests in the Kentucky proceeding merely as delaying tactics.

Determination

All ARB Members participated in this case, considered the record and considered the parties' briefs. We vote unanimously to reject the Respondent's request for an extension, to reject the Respondent's procedural challenges regarding the Direct Referral Proceeding and the Committee's Determination, to sustain the Committee's Determination on the charges and to sustain the Committee's Determination to revoke the Respondent's License.

On the procedural challenges, we hold that the Respondent's incarceration constituted no bar to a Direct Referral Proceeding and no grounds for the ARB to grant the Respondent any further extension for filing briefs in this proceeding. In Matter of Sokol v. N.Y.S. Dept of Health 223 A.D.2d 920, 636 A.D.2d 450 (Third Dept. 1996), the Appellate Division for the Third Department rejected a challenge to a Committee's Determination revoking a physician's License and refusing to adjourn a hearing until the physician's release from prison. The Court held that a respondent's absence from an administrative hearing constitutes no due process violation, as long as the respondent receives notice about the hearing and an opportunity to be heard, citing Matter of Laverne v Sobol, 149 AD2d 758, 539 N.Y.S.2d 556, lv denied 74 NY2d 610. The Respondent in this proceeding received notice about the proceeding and received the opportunity to offer evidence or argument in his defense. Further, the Committee acted appropriately in considering the Kentucky Summary Order and other documentation on the charge that the Respondent committed professional misconduct under N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 1998). In Matter of Ricci v. Chassin, 220 A.D.2d 828, 632 N.Y.S.2d 303 (Third Dept. 1995), the Appellate Division ruled that a Committee may find a respondent guilty for professional misconduct under N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 1998), with a non-final adjudication from another state as the basis, if the record from other state's

proceeding provides sufficient evidence that the respondent's conduct would constitute misconduct under New York Law. The Respondent's brief admits that Kentucky has now issued a final Order revoking his medical license in that state.

We sustain the Committee's Determination that the Respondent's Federal criminal conviction constituted misconduct under N. Y. Educ. Law § 6530(9)(ii) (McKinney Supp. 1998) and we refuse to entertain the Respondent's attempt to relitigate his Federal conviction by arguing his innocence here. The Respondent had the opportunity to contest his guilt on the Federal charges before the Federal Court and neither the Direct Referral Proceeding nor this proceeding offer a forum for the Respondent to relitigate his Federal conviction, Matter of Singla v. N.Y.S. Dept. of Health, 229 A.D.2d 798, 646 N.Y.S.2d 421 (Third Dept. 1996).

We also sustain the Committee's Determination that the Respondent's misconduct, that formed the basis for the Kentucky Board proceeding, constituted misconduct in New York under N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 1998). Petitioner's Exhibit 7 demonstrated that the Kentucky Board filed charges against the Respondent and that the Respondent defaulted in answering. The Respondent's failure to answer the charges constituted an admission under the Kentucky Medical Practice Act [KRS 311.591(4); Petitioner Exhibit 7 - Motion for Default Ruling]. The Respondent's brief concedes that Kentucky has now made final the Order revoking the Respondent's Kentucky medical license. The Respondent's admissions through default provided the Committee with a sufficient record to find that the Respondent's Kentucky conduct would constitute misconduct under New York Law under the following categories: practicing fraudulently, practicing with incompetence on more than one occasion, practicing with negligence on more than one occasion, being convicted for a Federal crime, wilfully making or filing a false report and committing conduct in medical practice that evidences moral unfitness.

Finally, we sustain the Committee's Determination revoking the Respondent's License. The Respondent's criminal convictions, standing alone, would provide sufficient grounds for the Committee to revoke the Respondent's License. The Respondent used his medical license to sell prescription samples illegally to patients and to commit mail fraud. In addition, the Respondent committed misconduct in Kentucky that demonstrated further that the Respondent lacked integrity

and that demonstrated that the Respondent lacked concern for patient safety. The ARB concludes that the Committee acted appropriately in revoking the Respondent's License.

ORDER

NOW, based upon this Determination, the Review Board renders the following **ORDER**:

1. The ARB **SUSTAINS** the Committee's Determination finding the Respondent guilty for professional misconduct.
2. The ARB **SUSTAINS** the Committee's Determination revoking the Respondent's License to practice medicine in New York State.

Robert M. Briber

Sumner Shapiro

Winston S. Price, M.D.

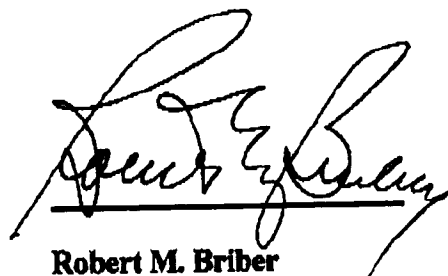
Stanley L. Grossman, M.D.

Therese G. Lynch, M.D.

In The Matter Of Kumaralingam Nagalingam, M.D.

Robert M. Briber, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Nagalingam.

Dated : 7/24/98



Robert M. Briber

In The Matter Of Kumaralingam Nagalingam, M.D.

Sumner Shapiro, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Nagalingam.

DATED: July 24, 1998


Sumner Shapiro

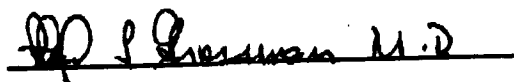
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In The Matter Of Kumaralingam Nagalingam, M.D.

Stanley L. Grossman, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Nagalingam.

Dated : July 27, 1998

A handwritten signature in dark ink, appearing to read "Stanley L. Grossman M.D.", is written over a horizontal line.

Stanley L. Grossman, M.D.

In The Matter Of Kumaralingam Nagalingam, M.D.

Therese G. Lynch, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Nagalingam.

Dated : 7/28 , 1998

Therese G. Lynch M.D.

Therese G. Lynch, M.D.