



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

May 1, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
433 River Street – 4th Floor
Troy, New York 12180

Jose Rigoberto Nabut, M.D.
8101 SW 72nd Avenue Apt. 410
West Miami, Florida 33143

Jose Rigoberto Nabut, M.D.
5301 S.W. 62nd Avenue
Miami, Florida 33155

RE: In the Matter of Jose Rigoberto Nabut, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-133) 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.

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.

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

DECISION

AND

ORDER

BPMC-00-133

IN THE MATTER

OF

JOSE RIGOBERTO NABUT, M.D.

A Notice of Referral Proceeding and Statement of Charges, both dated, January 28, 2000, were served upon the Respondent, **JOSE RIGOBERTO NABUT, M.D.**

FRANK E. IAQUINTA, M.D., Chairperson, **MARGERY W. SMITH, M.D.** and **STEPHEN E. WEAR, PH.D.**, 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 April 19, 2000, 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 **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent did not personally appear at the hearing, but he did participate by telephone conference with the Hearing Committee and testified under oath.

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 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 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)(b) and (d). A copy of the Commissioner's Order and Notice of Hearing and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Jose Rigoberto Nabut, M.D., the Respondent

FINDINGS OF FACT

The following Findings 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **JOSE RIGOBERTO NABUT, M.D.**, the Respondent, was authorized to practice medicine in New York State on March 19, 1984, by the issuance of license number 157704 by the New York State Education Department. (Pet's. Ex. 4)

2. On May 11, 1999, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), reprimanded Respondent's license, suspended his license for 120 days, imposed a \$5,000.00 fine, imposed at least two (2) years probation with indirect supervision for the first two (2) years, and required him to pay \$1,000,000.00 to judgment creditors, based on his failure to meet a statutory or legal obligation placed on him as a licensed physician in that he failed to pay medical malpractice judgments leveled against him and violated a rule of the board or department, or a lawful order of the board or department. (Pet's. Ex. 5)

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct resulting in the Florida Board's disciplinary action against Respondent would constitute misconduct under the laws of New York state.

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York Education Law §6530(9)(b) by reason of having been found guilty of improper professional practice or professional misconduct by duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York Education Law §6530(9)(d) by reason of his having had disciplinary action taken against him after a disciplinary action was instituted 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.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates the Respondent was disciplined by the Board of Medicine of the state of Florida based on his failure to pay medical malpractice judgements leveled against him. The "Florida Board" suspended his medical license for 120 days; imposed a \$5,000.00 fine; imposed at least a two years probation with indirect supervision for the first two (2) years; and required him to pay \$1,000,000.00 to judgment creditors.

The Respondent testified under oath via a telephone conference on April 19, 2000. The Hearing Committee was very impressed by his candor and his admissions concerning his failure to have adequate malpractice insurance and the Hearing Committee is convinced that the Respondent has taken steps to remedy that situation.

The Hearing Committee determines unanimously (3-0) that the Respondent should be placed on probation under terms and conditions as hereinafter specified in the ORDER.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's is placed on probation for a period to coincide with the period of probation imposed by the Board of Medicine of the State of Florida.

2. The Respondent shall comply with all of the terms and conditions of probation as prescribed by the "Florida Board". The Respondent shall cause the "Florida Board" to submit semi-annual reports to the Office of Professional Medical Conduct reporting on his compliance or failure to comply with any or the terms of his Florida probation.

3. Upon completion of his Florida probation, the Respondent must submit to the Office of Professional Medical Conduct evidence that he has satisfactorily fulfilled all of the terms of his Florida probation.

4. If, at some future date, the Respondent chooses to return to practice in New York he must:

- provide ninety days prior notice concerning his return to the Office of Professional Medical Conduct,
- include with the notice proof that his license remains in good standing in all states where he maintains a license; and
- Obtain adequate medical malpractice insurance in an amount to be negotiated with the Office of Professional Medical Conduct, the amount to be appropriate to the Respondent's location and type of practice.

5. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to this Order and shall assume and bear all cost 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.

6. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal or by certified or registered mail.

DATED: April 28, 2000
Take Success, New York

Frank E. Iaquinta M.D.
FRANK E. IAQUINTA, M.D., Chairperson

MARGERY W. SMITH, M.D.
STEPHEN E. WEAR, PH.D.

APPENDIX I

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

**IN THE MATTER
OF
JOSE RIGOBERTO NABUT, M.D.**

**NOTICE
OF
REFERRAL
PROCEEDING**

**TO: JOSE RIGOBERTO NABUT, M.D.
8101 SW 72nd Avenue, Apt. 410
West Miami, Florida 33143**

**JOSE RIGOBERTO NABUT, M.D.
5301 S.W. 62nd Avenue
Miami, Florida 33155**

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 22nd day of March, 2000 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 March 13, 2000.

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 March 13, 2000 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
January 28, 2000



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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518)402-0820

-----X

-----X

FACTUAL ALLEGATIONS

1. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York 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 would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

1. The facts in paragraphs A and/or B.

SECOND SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York State Education Law §6530(9)(d) by reason of his having had disciplinary action taken against him after a disciplinary action was instituted 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 the Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *Jan 28*, 2000
Albany, New York


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