



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

August 12, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Andrew D. Pogiatzis, M.D.
15 Yale Drive
North Hill, New York 11030-4042

Roy Nemerson, Esq.
Deputy Counsel
NYS Department of Health
5 Penn Plaza, 6th Floor
New York, New York 10001

Anthony Z. Scher, Esq.
Wood & Scher
14 Harwood Court
Suite 512
Scarsdale, New York 10583

RE: In the Matter of Andrew D. Pogiatzis, M.D.

Dear Dr. Pogiatzis, Mr. Scher and Mr. Nemerson:

Enclosed please find the Determination and Order (No. BPMC-92-65) of the Hearing Committee 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 than 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), "(t)he 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 all action 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
Corning Tower - Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

A handwritten signature in cursive script, reading "Tyrone T. Butler". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
ANDREW D. POGIATZIS, M.D. : ORDER
: :
-----X ORDER NO. BPMC-92-65

A Notice of Hearing and Statement of Charges, both dated March 24, 1992, were served upon the Respondent, Andrew D. Pogiatzis, M.D. JOHN H. MORTON, M.D. (Chair), JANE C. McCONNELL, ESQ., and KARL R. PALEY, M.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. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. A hearing was held on June 18, 1992. The Department of Health appeared by Roy Nemerson, Esq., Deputy Counsel. The Respondent appeared by Wood & Scher, Anthony Z. Scher, Esq., of Counsel. 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.

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 is charged with professional misconduct pursuant to Education Law Section 6530(9)(c). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

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 August 10, 1979 by the issuance of license number 139326 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992 at 15 Yale Drive, North Hill, New York 11030-4042. (Not Contested).

2. On March 30, 1989, the Commissioner of the New York State Department of Social Services, after a formal hearing, found

that Respondent violated, inter alia, 18 NYCRR 515.2(b)(3), which prohibits "practicing a profession fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion or negligence or incompetence on more than one occasion." Among the violations found by the Commissioner were Respondent's:

- i. Failure to obtain a urinalysis and urine culture in a patient with a suspected urinary tract infection.
- ii. Prescription of medications, including Halotestin, a male hormone, without medical indication;
- iii. Diagnosis of "urethritis" in the absence of any related patient complaint or positive physical or laboratory findings, and
- iv. Prescription of an antibiotic without ordering a necessary urine culture.

(Dept. Exhibit #2).

3. The Commissioner further found that Respondent's medical records were "woefully inadequate" in that they failed to include basic information about patients' symptoms, histories, exam findings, diagnoses and tests. (Dept. Exhibit #2).

4. Based upon the above-stated violations, the Commissioner of the Department of Social Services ordered the permanent disqualification of Respondent from the New York State Medicaid Program. (Dept. Exhibit #2).

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 Committee concluded that the Department has met its

burden of proof. The preponderance of the evidence demonstrates that Respondent was permanently disqualified from participation in the New York State Medicaid Program. The record demonstrates that this permanent disqualification followed an administrative adjudication by the Department of Social Services which found that Respondent had practiced the profession of medicine "fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion or negligence or incompetence on more than one occasion". In addition, Respondent was found to have maintained inadequate records of the care and treatment rendered to his patients.

Based upon the decision of the Department of Social Services, received into evidence as Department's Exhibit #2, the Hearing Committee concluded that Respondent's conduct, as cited in the decision, constituted professional misconduct within the meaning of New York Education Law Sections 6530(3) ("negligence on more than one occasion"), 6530(5) ("incompetence on more than one occasion"), and 6530(32) ("failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient").

As a result of the findings of the Department of Social Services, the Hearing Committee concluded that Respondent committed professional misconduct within the meaning of Education Law §6530(9)(c). He has been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, where the

underlying conduct would constitute professional misconduct as defined by Education Law Section 6530. Therefore, the Hearing Committee sustained the specification of misconduct alleged in the Statement of Charges. (Dept. Ex. #1).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent should receive a censure and reprimand for his conduct. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation.

The action brought by the Department against Respondent is based solely upon the decision rendered in the prior DSS proceeding. The Administrative Law Judge who heard the DSS action stated that the case was based upon a review of nine of Respondent's medical records. However, her decision focused solely upon a review of a single chart, for "illustrative" purposes. (Dept. Ex. #2, p.10).

The findings in the DSS proceeding regarding the nature of Respondent's practice (as of 1987) troubled the members of the Hearing Committee. However, given the sparse record before the Hearing Committee, it was unclear as to the extent and severity of the deficiencies in Respondent's medical practice. Based upon the totality of the circumstances, the Hearing Committee unanimously

concluded that a more severe sanction was not warranted.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and

2. Respondent shall hereby receive a **CENSURE** and **REPRIMAND** for his conduct in this matter.

DATED: Albany, New York
August 11, 1992


JOHN H. MORTON, M.D. (Chair)

Karl R. Paley, M.D.
Jane C. McConnell, Esq.

TO: Andrew D. Pogiatzis, M.D.
15 Yale Drive
North Hill, New York 11030-4042

Roy Nemerson, Esq.
Deputy Counsel
New York State Department of Health
5 Penn Plaza, 6th Floor
New York, New York 10001

Anthony Z. Scher, Esq.
Wood & Scher
14 Harwood Court
Suite 512
Scarsdale, New York 10583

APPENDIX I

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

-----X	:	
	:	NOTICE OF
IN THE MATTER	:	
	:	REFERRAL
OF	:	
	:	PROCEEDING
ANDREW D. POGIATZIS, M.D.	:	
-----X	:	

TO: ANDREW D. POGIATZIS, M.D.
15 Yale Drive
North Hill, New York 11030-4042

PLAINTIFF'S
DEFENDANT'S
COMPANY'S
DEPARTMENT'S
PETITIONER'S
RESPONDENT'S
DATE 6/8/92 REPORTER me
STERLING REPORTING SERVICE, INC.

EXHIBIT 1
for identification
in evidence

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1992) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of April, 1992 at 2:15 o'clock in the afternoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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 Larry Storch, Administrative Law Judge, New York State Department of Health, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, as well as the Department of Health attorney indicated below, on or before

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with Judge Storch at the address indicated above on or before *APRIL 17, 1992* 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 Judge Storch 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: New York, New York

March 24, 1992



Chris Stern Hyman, Counsel
Bureau of Professional Medical
Conduct

Inquiries should be addressed to:
Terrence Sheehan
Associate Counsel
(212) 613-2601

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ANDREW D. POGIATZIS, M.D. : CHARGES

-----X

ANDREW D. POGIATZIS, M.D., the Respondent, was authorized to practice medicine in New York State on August 10, 1979 by the issuance of license number 139326 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992 at 15 Yale Drive, North Hill, N.Y. 11030-4042.

SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(c), (McKinney Supp. 1992) in that he was found in violation of a state or federal statute or regulation pursuant to a final decision or determination in which no appeal is pending, which violation resulting in the final decision or determination constitutes professional misconduct pursuant to N.Y. Educ. Law Sections 6530(3), (5) and (32) (McKinney 1992). Specifically, Petitioner charges:

On March 30, 1989, the Commissioner of the New York State Department of Social Services, after a formal hearing, found that Respondent had violated, inter alia, 18 NYCRR 515.2 (b)(3), which prohibits "practicing a profession fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion or negligence or incompetence on more than one occasion". Among the violations found by the Commissioner were Respondent's:

- i. Failure to obtain a urinalysis and urine culture in a patient with a suspected urinary tract infection.
- ii. Prescription of medications, including Halotestin, a male hormone, without medical indication;
- iii. Diagnosis of "urethritis" in the absence of any related patient complaint or positive physical or laboratory findings, and


iv. Prescription of an antibiotic without ordering a necessary urine culture.

In addition, the Commissioner found that Respondent's medical records were "woefully inadequate" in that they failed to include basic information about patients' symptoms, histories, exam findings, diagnoses and tests.

Based on these violations the Commissioner ordered the permanent disqualification of the Respondent from the New York State Medicaid Program.

DATED: New York, New York

March 24, 1992


CHRIS STERN HYMAN
COUNSEL
Bureau of Professional
Medical Conduct