



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

August 1, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Smith, Esq.
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

Jorge Saborio, M.D.
P.O. Box 6070
Managua, Nicaragua

Effective Date: 08/08/96

RE: In the Matter of Jorge Saborio, M.D.

Dear Mr. Smith and Dr. Saborio:

Enclosed please find the Determination and Order (No. 96-182) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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 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 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.

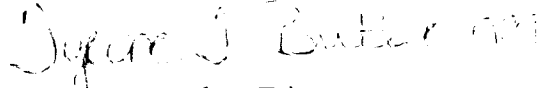
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
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.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive, slightly slanted style.

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
JORGE SABORIO, M.D.**

**DETERMINATION
AND
ORDER
BPMC-96-182**

DAVID HARRIS, M.D., Chairperson, **ANDREW CONTI, M.D.**, and **EUGENIA HERBST**, 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 June 19, 1996. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **DAVID SMITH, ESQ.**, of Counsel. The Respondent, **JORGE SABORIO**, did not appear. 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

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 6539(9)(b) and (d). 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. Jorge Saborio, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on or about May 21, 1976, by the issuance of license number 127089 by the New York State Education Department.
2. By decision of the Oklahoma State Board of Medical Licensure and Supervision ("Oklahoma Board") dated January 25, 1996, after a hearing at which Respondent did not appear, Respondent was found guilty of professional misconduct based on abandonment of a patient, practicing while impaired by alcohol and negligence in the care of at least three (3) patients, all in violation of the Oklahoma Medical Practice Act, 59 O.S. Supp. 1995, §509 Paragraphs 5 and 16 and Rule 435:10-7-4 of the Oklahoma Board. The Oklahoma Board ordered Respondent's medical license revoked. (Ex. 5)
3. Prior to the entry of the default decision, as set forth in Paragraph 2 above, Respondent's Oklahoma medical license had been summarily suspended based upon an emergency order

of the Oklahoma Board holding that under applicable standards of proof, there was sufficient evidence to conclude that:

- a. Respondent's actions described in Paragraph 2 above, were in violation of the Oklahoma Medical Practice Act and constituted a direct threat to the public health safety and welfare of the people of Oklahoma; and
 - b. Without an emergency order, Respondent could continue such conduct at any time.
4. The Office for Professional Medical Conduct (OPMC) was advised by Respondent's brother that Respondent had left the United States and relocated to Managua, Nicaragua. He provided a telephone number for Respondent in Nicaragua. (T. 6)
5. Respondent was contacted by the OPMC by telephone and provided three separate mailing addresses, including a post office box and two street addresses. On or about May 7, 1996, two copies of the Notice of Hearing and Statement of Charges were mailed by an air express service to those two street addresses in Nicaragua. The OPMC was subsequently advised that one address did not exist and that the Respondent did not reside at the other. (Ex. 3; T. 6-8)
6. A copy of the Notice of Hearing and Statement of Charges was sent to the post office box address provided by Respondent by registered mail, return receipt, on or about May 29, 1996. No signed receipt was received by the OPMC. (Ex. 4; T. 8)

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 concluded that the Department had exercised due diligence in attempting to serve Respondent with notice of the pendency of this proceeding. The attempts to locate Respondent's address and to mail the jurisdictional documents are verified by the Affidavits of Attempted Service and of Mailing (Ex. 3-4). It was noted that Respondent failed to appear at the Oklahoma proceeding and appeared to hold little interest in retaining his New York license. The Committee determined that the Department had obtained jurisdiction over Respondent in this matter.

The Committee determined that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that Respondent had been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and, furthermore, that the Oklahoma Board took disciplinary action against Respondent's license to practice medicine in that state, by summarily suspending his license. The basis for such action was conduct, which, had it been committed in New York, would have constituted professional misconduct pursuant to New York Education Law Section 6530(3) [practice of the profession with negligence on more than one occasion]; (5) [practice of the profession with incompetence on more than one occasion]' (7) [practice of the profession while impaired]; (8) [being a habitual abuser of alcohol or narcotics]; (20) [conduct evidencing moral unfitness]; and (30) [abandoning or neglecting a patient under and in the need of immediate professional care].

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 for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee determined that based upon Respondent's egregious misconduct in Oklahoma that revocation of his New York medical license was the only appropriate penalty.

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) is **SUSTAINED**; and
- 2 Respondent's license to practice medicine in New York State be and hereby is **REVOKED**; and
- 3 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: Albany, New York
, 1996

DAVID HARRIS, M.D.
(CHAIR)

ANDREW CONTI, M.D.
EUGENIA HERBST

TO: David Smith, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

Jorge Saborio, M.D.
P.O. Box 6070
Managua, Nicaragua

APPENDIX I

1 ev
6/19/96 AI

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

IN THE MATTER
OF
JORGE SABORIO, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: JORGE SABORIO, M.D.
P.O. Box 6070
Managua, Nicaragua

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on June 19, 1996, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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 the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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: New York, New York
Apr. 23, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

DAVID W. SMITH
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2617

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

IN THE MATTER
OF
JORGE SABORIO, M.D.

STATEMENT
OF
CHARGES

JORGE SABORIO, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 21, 1976, by the issuance of license number 127089 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. By decision of the Oklahoma State Board of Medical Licensure and Supervision ("Oklahoma Board") dated January 25, 1996, after hearing at which Respondent did not appear, Respondent was found guilty of professional misconduct based on abandonment of a patient, practicing while impaired by alcohol and negligence in the care of at least three patients, all in violation of the Oklahoma Medical Practice Act, 59 O.S. Supp. 1995, §509 Paragraphs 5 and 16 and Rule 435:10-7-4 of the Oklahoma Board, Paragraphs 3, 11, 15, 17, 18, 23, 35, 36, 40 and 42 which are as follows:
- Oklahoma Medical Practice Act, 59 O.S.. Supp. 1995, §509, Paragraph:
 - (5) "Habitual intemperance or habitual use of habit forming drugs."
 - (16) "Inability to practice medicine with reasonable skill and safety to patients by reason of ... drunkenness, excessive use of drugs, narcotics, chemicals ..."

- Rule 435:10-7-4, Paragraph:

- (3) "... habitual or excessive use of any drug which impairs the ability to practice medicine..."
- (11) "Conduct likely to deceive, defraud or harm ..."
- (15) "Gross or repeated negligence in the practice of medicine ..."
- (17) "Being physically or mentally unable to practice medicine or surgery with reasonable skill and safety ..."
- (18) "Practice or other behavior that demonstrates an incapacity or incompetence to practice medicine .."
- (23) "Commission of any act of sexual abuse, misconduct, or exploitation related or unrelated to the licensee's practice ..."
- (35) "Failure to transfer pertinent and necessary medical records to another physician in a timely fashion when legally requested to do so ..."
- (36) "Improper management of medical records ..."
- (40) "The inability to practice medicine and surgery with reasonable skill and safety to patients by reason of drunkenness, excessive use of drugs, narcotics, chemicals ..."

- (42) "Failure to inform the Board of a state of physical or mental health of the licensee or of any other health professional which constitutes or which the licensee suspects constitutes a threat to the public ..."

The Oklahoma Board ordered Respondent's medical license revoked.

- B. Prior to the entry of the default decision, as set forth in Paragraph A, Respondent's Oklahoma medical license had been summarily suspended based upon an emergency order of the Oklahoma Board holding that under applicable standards of proof, there was sufficient evidence to conclude that:
1. Respondent's actions described in Paragraph A, above, were in violation of the Oklahoma Medical Practice Act and constituted a direct threat to the public health safety and welfare of the people of Oklahoma; and
 2. Without an emergency order, Respondent could continue such conduct at any time.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(McKinney Supp. 1996) by 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 (namely N.Y. Educ. Law §§ 6530 (3), (5), (7), (8), (20) and (30) as alleged in the facts of the following:

1. Paragraph A.

SECOND SPECIFICATION

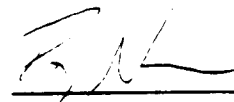
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(McKinney Supp. 1996) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a

license or the surrender of the license would, if committed in New York State, constitute professional misconduct under the law of New York State (namely N.Y. Educ. Law §6530(3), (5), (7), (8), (20) and (30) as alleged in the facts of the following:

2. Paragraph A and/or Paragraph B and each of its subparagraphs.

DATED: April 4, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct