



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

Paula Wilson
Executive Deputy Commissioner

June 16, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rodrigo D. Agpaoa, M.D.
1710 DeKalb Avenue
Brooklyn, New York 11237

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

RE: In the Matter of Rodrigo D. Agpaoa, M.D.

Dear Dr. Agpaoa and Ms. Lepicier:

Enclosed please find the Determination and Order (No. BPMC-93-85) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
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 (p), 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.

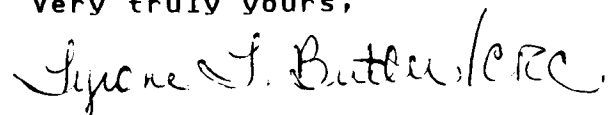
The notice of review served on the Administrative Review Board should be forwarded to:

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 that reads "Tyrone T. Butler / CRC".

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
RODRIGO D. AGPAOA, M.D. : ORDER
-----X

ORDER NO. BPMC-93-85

A Notice of Hearing, dated April 20, 1993, and a Statement of Charges, dated April 26, 1993, were served upon the Respondent, Rodrigo D. Agpaoa, M.D. **JERRY WAISMAN, M.D. (Chair), STANLEY L. GROSSMAN, M.D., and CAROLYN C. SNIPE**, 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 May 20, 1993. The Department of Health appeared by Denise Lepicier, Esq., Assistant Counsel. The Respondent appeared *pro se*. 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)(a)(i). 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. Rodrigo D. Agpaoa, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on February 4, 1983, by the issuance of license number 153148 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. (Pet. Ex. #7).

2. On or about October 15, 1991, Respondent was charged with one count of Grand Larceny in the Third Degree in violation of N.Y. Penal Law Section 155.35 (McKinney 1988), three counts of Criminal Sale of a Prescription for a Controlled Substance in violation of N.Y. Penal Law Section 220.65 (McKinney 1989), and three counts of Offering a False Instrument for Filing in the First Degree in violation of N.Y. Penal Law Section 175.35 (McKinney 1988). On or about April 30, 1992, Respondent pled guilty to one count of the Criminal Sale of a Prescription for a Controlled Substance in full satisfaction of the charges against him. (Pet. Ex. #2, 3, 5 and 6).

3. On June 15, 1992, Respondent was sentenced to one year's incarceration in a New York City correctional facility and ordered to make restitution in the amount of \$13,000. (Pet. Ex. #5 and 6).

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 Hearing Committee unanimously concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates that on April 30, 1992, Respondent pled guilty to one count of the Criminal Sale of a Prescription for a

Controlled Substance, in violation of N.Y. Penal Law Section 220.65 (McKinney 1989).

The Hearing Committee further concluded that Respondent committed professional misconduct within the meaning of Education Law Section 6530(9)(a)(i), by virtue of this criminal conviction. As a result, the Hearing Committee sustained the specification of misconduct alleged in 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 record established that Respondent was engaged in an internal medicine practice at the Lyndon B. Johnson Health Complex, Inc. in Brooklyn, New York during the period 1983 through 1991. In 1990, Respondent began working part-time at another clinic, also located in Brooklyn. It was at this second clinic where Respondent began selling prescriptions for controlled substances. He testified that he gave people the prescriptions because he was threatened and intimidated by the patients at the clinic. (See, Tr., pp. 13-19). He also testified that he never gave

prescriptions inappropriately at the Lyndon B. Johnson Health Complex because there were bodyguards and he felt safe. (See, Tr., p. 13).

Any individual who receives a license to practice medicine is placed into a position of public trust. Respondent used his position of trust to unduly enrich himself, at the public's expense. Further, he issued prescriptions for controlled substances without medical justification. Respondent testified that he gave the prescriptions because he was in fear of bodily harm. However, he remained at the clinic for a year, even though he had another position at the Lyndon B. Johnson Health Complex, Inc., where he said that he was safe from harm. He could have removed himself from the situation where he felt threatened, yet he failed to do so.

Under the totality of the circumstances, the Hearing Committee determined that Respondent's conduct constituted a serious breach of the public trust and warrants revocation of his medical license.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges dated April 26, 1993 (Petitioner's Exhibit #1) is **SUSTAINED**, and

2. Respondent's license to practice medicine in New York State is **REVOKED**.

DATED: Albany, New York
, 1993



JERRY WAISMAN, M.D. (Chair)

STANLEY L. GROSSMAN, M.D.
CAROLYN C. SNIPE

TO: Rodrigo D. Agpaoa, M.D.
1710 DeKalb Avenue
Brooklyn, New York 11237

Denise Lepicier, Esq.
Assistant Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: RODRIGO D. AGPAOA, M.D. : PROCEEDING
:-----X

TO: RODRIGO D. AGPAOA, M.D.
1710 Dekalb Avenue
Brooklyn, N.Y. 11237

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. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20th day of May, 1993, at 1:00 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 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: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 10, 1993 .

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 on or before May 10, 1993 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 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.

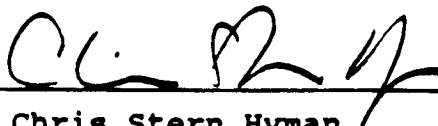
The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

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

April 20, 1993



Chris Stern Hyman
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Denise Lepicier
Assistant Counsel
212-613-2617

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

-----X

IN THE MATTER : STATEMENT
OF : OF
RODRIGO D. AGPAOA, M.D. : CHARGES

-----X

RODRIGO D. AGPAOA, M.D., the Respondent, was authorized to practice medicine in New York State on February 4, 1983, by the issuance of license number 153148 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

- A. On or about October 15, 1991, the Respondent was charged in indictment number 12809/91 with one count of Grand Larceny in the Third Degree in violation of N.Y. Penal Law Section 155.35 (McKinney 1988), three counts of Criminal Sale of a Prescription for a Controlled Substance in violation of N.Y. Penal Law Section 220.65 (McKinney 1989), and three counts of Offering a False Instrument for Filing in the First Degree in violation of N.Y. Penal Law Section 175.35 (McKinney 1988). On or about April 30, 1992, the Respondent pled guilty to one

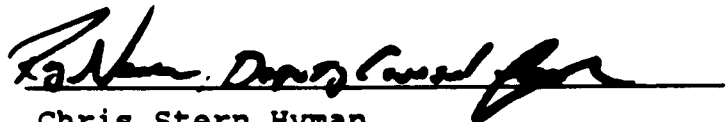
count of the indictment charging him with the Criminal Sale of a Prescription for a Controlled Substance in full satisfaction of the charges against him. On or about June 15, 1992, the Respondent was sentenced to one year's incarceration in the New York City Department of Correctional Services and restitution of \$13,000.

SPECIFICATION

Respondent is charged with professional misconduct, within the meaning of N.Y. Educ. Law Section 6530 (9)(a)(i) (McKinney Supp. 1993), in that he was convicted of one count of criminal activity in the State of New York as charged in paragraph A.

DATED: New York, New York

9/26/93



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct