



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., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

June 1, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Armando Tabotabo, M.D.
P.O. Box 985
Matawan, New Jersey 07747-0985

Armando Tabotabo, M.D.
12 W. Front Street
Keyport, New Jersey 07735-1210

Armando Tabotabo, M.D.
175 Santiago Avenue, Apt. B
Rutherford, New Jersey 07070-1641

RE: In the Matter of Armando Tabotabo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-133) 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.

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 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.

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 penalties other than suspension or revocation 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.

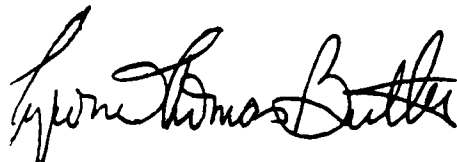
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
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:cah
Enclosure

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

**IN THE MATTER
OF
ARMANDO TABOTABO, M.D.**

DETERMINATION

AND

ORDER

BPMC 01-133

COPY

A Commissioner's Order and Notice of Referral Proceeding, and a Statement of Charges, both dated April 6, 2001, were served upon the Respondent, **ARMANDO TABOTABO, M.D.**; **MS. MARY MEAGHER**, Chairperson, **DIANA GARNEAU, M.D.** and **JOHN CHOATE, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on May 16, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **PAUL ROBERT MAHER, ESQ.** and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared pro se.

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 Sections 230(10)(p) and (12). The former 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. The latter statute provides for an expedited hearing when a licensee has had emergency action taken against him pursuant to an order of the Commissioner of Health, based upon a finding that the licensee's conduct presents an imminent danger to the health of the people of New York State.

In the instant case, the Commissioner issued an order on April 6, 2001, directing that Respondent not practice medicine in New York State until, and unless, the order is modified or vacated. Respondent has been charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (2), (3), (4), (5), (6), (15), (16), (20), (24), (29), and (32). Copies of the Order and Notice of Referral Proceeding, and Statement of Charges, are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

NONE

For the Respondent:

ARMANDO TABOTABO, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to transcript page numbers or exhibits, denoted by the prefixes "Tr." and "Ex.". These citations refer to 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 specified.

1. **ARMANDO TABOTABO, M.D.**, the Respondent, was authorized to practice medicine in New York State on September 6, 1973, by the issuance of license number 117906 by the New York State Education Department (Ex. 4).
2. On or about September 3, 1999, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, Board of Medical Examiners (hereinafter "New Jersey Board"), by an Order Temporary Limiting License (hereinafter "New Jersey Order 1"), prohibited Respondent from possessing, prescribing, ordering and administering any controlled dangerous substances except pursuant to a valid prescription from his treating physician for his specific and diagnosed medical condition and required that have a practice monitor accompany him whenever patient care was

delivered (including care rendered in the office, in the hospital, in nursing home facilities or other patient care settings), based on a finding "that, if Respondent were to continue practice with an unrestricted plenary license, he would present a clear and imminent danger to the public's health, safety and welfare" (Ex. 5).

3. On or about February 16, 2001, the New Jersey Board, by an Order Granting Emergent Relief and Leave to File a Second Amended Complaint (hereinafter "New Jersey Order 2"), temporarily suspended Respondent's license to practice medicine and granted the State leave to file a Second Amended Complaint, based on Respondent's violation of New Jersey Order 1, described in Paragraph A above (namely, his having continued to practice without a practice monitor), and found that Respondent "is now a clear and imminent danger to the public health, safety and welfare" (Ex. 5).
4. On or about March 14, 2001, the New Jersey Board by a Consent Order (hereinafter "New Jersey Order 3"), accepted the surrender of Respondent's license to practice medicine, with prejudice to any reapplication, and deemed it to have the full effect of revocation, based on admissions by him to conduct as set forth in a Second Amended Complaint filed by the State of New Jersey. The Second Amended Complaint alleged, among other things, the indiscriminate prescribing of controlled dangerous drugs on numerous occasions without appropriate physical examinations and without medical justification, gross negligence and incompetence, repeated acts of negligence and incompetence, failure to keep accurate patient records, and failure to obey New Jersey Order 1 by seeing patients, practicing medicine, and rendering medical services without the presence of a monitor (Ex. 6).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the New Jersey Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(2) – {Practicing the profession fraudulently or beyond its authorized scope};
- New York Education Law §6530(3) – {Practicing the profession with negligence on more than one occasion};
- New York Education Law §6530(4) – {Practicing the profession with gross negligence on a particular occasion};
- New York Education Law §6530(5) – {Practicing the profession with incompetence on more than one occasion};
- New York Education Law §6530(6) – {Practicing the profession with gross incompetence};
- New York Education Law §6530(15) – {Failure to comply with an order issued pursuant to ... subdivision seventeen of section two hundred thirty of the public health law};
- New York Education Law §6530(16) – {A willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine};
- New York Education Law §6530(24) – {Practicing ... beyond the scope permitted by law ...};
- New York Education Law §6530(29) – {Violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law}; and
- New York Education Law §6530(32) – {Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient...}.

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) 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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken 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 New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that Respondent consented to surrender his medical license in New Jersey, based upon a consent order wherein he admitted to numerous allegations of medical misconduct under a variety of definitions of misconduct as set forth in the applicable New Jersey statutes. This consent order was the culmination of a series of disciplinary actions taken against him that resulted in restrictions on his practice

of medicine, then the temporary suspension of his license accompanied by a finding that he represented "a clear and imminent danger to the public health, safety and welfare".

The Hearing Committee determines that the conduct of which Respondent was found guilty, and to which he admitted, would constitute misconduct under various definitions of misconduct in New York State, as set forth above¹. The most serious of these findings were that he repeatedly and indiscriminately prescribed controlled dangerous substances to undercover agents, and that he practiced without a monitor after being ordered by the New Jersey Board not to do so.

Since Respondent has been demonstrated to have committed professional misconduct, it remains to be decided what, if any, penalty should be imposed in New York State. At the hearing, the only evidence presented by Respondent on that issue was his testimony that he has practiced medicine for 30 years without other problems, and that he would like to continue to practice medicine in order to provide for his family. However, given the extremely egregious nature of Respondent's conduct, and the absence of evidence that his behavior would be unlikely to be repeated were he allowed to practice in New York, this testimony is of little significance.

The hearing Committee concludes that revocation of Respondent's license is necessary to protect the residents of New York State from conduct of the type he engaged in New Jersey. Obviously, the Hearing Committee finds no reason to recommend any change in the Commissioner's Order prohibiting Respondent from practicing medicine in New York State.

¹ The Hearing Committee concludes that the evidence does not support the charge that Respondent was morally unfit to practice medicine (Education Law 6530 (20)).

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice medicine in New York State is **REVOKED**, as of the effective date of this Determination and Order.

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

DATED: Rochester, New York
May 24, 2001

Ms Mary Meagher
MS. MARY MEAGHER
Chairperson

DIANA GARNEAU, M.D.
JOHN CHOATE, M.D.

APPENDIX 1

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

IN THE MATTER
OF
ARMANDO TABOTABO, M.D.
CO-01-02-0961-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: ARMANDO TABOTABO, M.D.
12 W. Front Street
Keyport, NJ 07735-1210

ARMANDO TABOTABO, M.D.
175 Santiago Avenue, Apt. B
Rutherford, NJ 07070-1641

ARMANDO TABOTABO, M.D.
P.O. Box 985
Matawan, NJ 07747-0985

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached, hereto, and made a part, hereof, has determined that ARMANDO TABOTABO, M.D., has been disciplined by a duly authorized professional disciplinary agency of another jurisdiction, The State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, for acts which, if committed in this state would have constituted the basis for summary action by the Commissioner.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, ARMANDO TABOTABO, M.D., Respondent, shall not practice

EXHIBIT

5-16-01 D

medicine in the State of New York. This order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 16th day of May, 2001 at 10:00 am in the forenoon at Hedley Park Place, 5th Floor, 433 River Street, Troy, New York and at such other adjourned dates, times, and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. Such evidence or sworn testimony shall be 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 that 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. A summary of the Department of Health Hearing Rules is enclosed. 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.

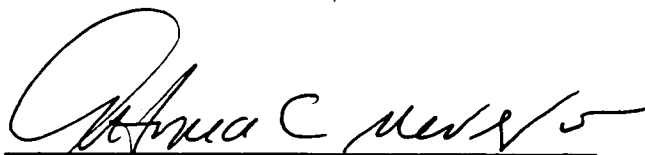
The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are, therefore, not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED, AND/OR THAT
YOU MAY BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE
URGED TO OBTAIN AN ATTORNEY FOR THIS
MATTER.**

DATED: Albany, New York

April 6, ,2001

A handwritten signature in black ink, appearing to read "Antonia C. Novello", written over a horizontal line.

ANTONIA C. NOVELLO, M.D. M.P.H, Dr. P.H.,
Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ARMANDO TABOTABO, M.D.
CO-01-02-0961-A

STATEMENT
OF
CHARGES

ARMANDO TABOTABO, M.D., the Respondent, was authorized to practice medicine in New York state on September 6, 1973, by the issuance of license number 117906 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 3, 1999, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, Board of Medical Examiners (hereinafter "New Jersey Board"), by an Order Temporary Limiting License (hereinafter "New Jersey Order 1"), prohibited Respondent from possessing, prescribing, ordering and administering any controlled dangerous substances except pursuant to a valid prescription from his treating physician for his specific and diagnosed medical condition and required that he be monitored by a monitor to accompany him whenever patient care is delivered (including care rendered in the office, in the hospital, in nursing home facilities or other patient care setting), based on a finding "that, if Respondent were to continue practice with an unrestricted plenary license, he would present a clear and imminent danger to the public's health, safety and welfare."

B. On or about February 16, 2001, the New Jersey Board, by an Order Granting Emergent Relief and Leave to File a Second Amended Complaint (hereinafter "New Jersey Order 2"), temporarily suspended Respondent's license to practice medicine and granted leave to file a Second Amended Complaint, based on Respondent's violation of New Jersey Order 1, described in Paragraph A above, and found that Respondent "is now a clear and imminent danger to the public health, safety and welfare."

C. On or about March 14, 2001, the New Jersey Board by a Consent Order (hereinafter "New Jersey Order 3 "), accepted the surrender of Respondent's license to practice medicine, with prejudice to any reapplication, and deemed it to have the full effect of revocation, based on indiscriminate prescribing of controlled dangerous drugs on numerous occasions without appropriate physical examinations and without medical justification, amounting to gross negligence and incompetence, repeated acts of negligence and incompetence, lack of good moral character, and failure to keep accurate patient records, and failure to obey New Jersey Order 1 described in Paragraph A above by seeing patients, practicing medicine, and rendering medical services without the presence of a monitor.

D. The conduct resulting in the New Jersey Board disciplinary actions against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(2) (practicing the profession fraudulently or beyond its authorized scope);
2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(4) (gross negligence);
4. New York Education Law §6530(5) (incompetence on more than one occasion);
5. New York Education Law §6530(6) (gross incompetence);
6. New York Education Law §6530(15) (failure to comply with an order);
7. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine);
8. New York Education Law §6530(20) (moral unfitness);
9. New York Education Law §6530(24) (practicing beyond the scope permitted by law);
10. New York Education Law §6530(29) (violating a condition or limitation imposed on the licensee); and/or
11. New York Education Law §6530(32) (record keeping).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) 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, in that Petitioner charges:


1. The facts in paragraphs A, B, C, and/or D.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having surrendered his license or having had other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in paragraphs A, B, C, and/or D.

DATED: *April 6*, 2001
Albany, New York


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