



Public
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

October 8, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Paul Eli Nathan, M.D.

- REDACTED

Regina O. Matthews, Esq.
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

Effective Date: 10/15/96

RE: In the Matter of Paul Eli Nathan, M.D.

Dear Ms. Abeloff, Dr. Nathan and Ms. Matthews:

Enclosed please find the Determination and Order (No. 96-238) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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
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,

REDACTED

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

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

-----X
IN THE MATTER :
OF :
PAUL ELI NATHAN, M.D. :
-----X

DETERMINATION
AND
ORDER

BPMC-96-238

A Notice of Referral Proceeding and Statement of Charges, both dated July 29, 1996, were served upon the Respondent, Paul Eli Nathan, M.D. **RICHARD PIERSON, Jr., M.D. (Chair), ANTHONY CLEMENDOR, 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Dianne Abeloff, Esq., Associate Counsel. The Respondent appeared *pro se*. A hearing was held on September 10, 1996, with Respondent appearing *via* a telephone conference call. 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 §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 §6530(9)(b). 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. Paul Eli Nathan, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on July 2, 1990

by the issuance of license number 182659 by the New York State Education Department. (Pet. Ex. #2).

2. On or about March 22, 1996, after a hearing, the Louisiana State Board of Medical Examiners (hereinafter the "Louisiana Board") found that Respondent abused drugs and alcohol for two thirds of his life, and that he had demonstrated an ability to circumvent all of the tests and safeguards inherent in the program of the Physician's Health Committee contract. They also found that Respondent had been drug and alcohol free for five months at the time of the hearing, but the Board found that period was not sufficient to allow Respondent to return to the practice of medicine. (Pet. Ex. #3).

3. The Louisiana Board ordered that Respondent's license to practice medicine in Louisiana be suspended for a period of one year, beginning October 2, 1995; at the end of the suspension, Respondent shall be evaluated in an in-patient psychiatric program; Respondent's DEA license shall be suspended for a period of five years; and at the end of his one year suspension, and following his evaluation, Respondent shall be required to make a personal appearance before the Louisiana Board, at which time the Board may impose such additional conditions as it may see fit. (Pet. Ex. #3).

4. Pursuant to the terms of the March 22, 1996 Order, Respondent underwent an in-patient evaluation at the Palmetto Addiction Recovery Center. Respondent submitted a letter with attached discharge assessments and recommendations, dated August 19, 1996, written by Douglas W. Cook, M.D., the director of the

Center. Dr. Cook noted that Respondent appeared to be in a stable and good phase of recovery and had over one year of sobriety. Dr. Cook recommended that the Louisiana Board restore Respondent's Louisiana medical license. He further recommended that Respondent be required to follow the remainder of his five-year contract with the Physician's Health Committee. (Resp. Ex. B).

5. Respondent also submitted a letter, dated June 25, 1996, written by Martha E. Brown, M.D. Dr. Brown is an associate professor and Chief of the Division of Addictive Disorders at the Louisiana State University School of Medicine. She is also the Medical Director of the Louisiana Physician's Health Program. Dr. Brown stated that in her opinion, Respondent is doing well and can return to the practice of medicine. She recommended that during the first year of his recovery, Respondent should work fewer hours than he did in the past. She noted that Respondent was attending weekly groups and meeting the aftercare criteria mandated for Respondent. She also indicated that Respondent's urine drug screens have been negative since his in-patient treatment program. (Resp. Ex. A).

6. Respondent also submitted a letter, dated August 23, 1996, written by Mark J. Coleman, M.A., B.C.S.A.C. Mr. Coleman has been treating Respondent since his discharge from the Palmetto Addiction Recovery Center on October 2, 1995. Mr. Coleman noted that Respondent has participated in weekly Physicians Health Group meetings, as well as daily attendance at Alcoholics Anonymous meetings. He also indicated that Respondent

has submitted to weekly drug tests, as well as random drug screens on a monthly basis. He stated that all of Respondent's drug screens have been negative. Mr. Coleman supports Respondent's return to the practice of medicine. (Resp. Ex. A).

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 concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that the Louisiana Board suspended Respondent's medical license because of drug and alcohol addictions. The Committee further concluded that Respondent's conduct, if committed in New York State, would constitute professional misconduct in violation of Education Law §6530(8) [being a habitual abuser of alcohol and narcotics]. Accordingly, the Hearing Committee voted to sustain the specification of professional misconduct.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusion's of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended until such time as Respondent seeks to return to the active practice of medicine in New York State. Respondent shall be required to notify the Director of the Office of

Professional Medical Conduct ninety days before returning to the practice of medicine in this state. Thereafter, the suspension shall be stayed and Respondent shall be placed on probation for a period of five years. During the period of probation, Respondent shall be monitored under terms determined by the Director of the Office of Professional Medical Conduct in accordance with Public Health Law §230(18)(a). 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 Hearing Committee had the opportunity to hear Respondent, as well as to review the documentation which he submitted. The Committee believes that Respondent is sincere in his desire to maintain sobriety and return to the practice of medicine. Respondent has requested that no sanctions be placed upon his New York medical license. Nevertheless, Respondent, who is 34 years old, has suffered from long-standing addictions and has only maintained sobriety for approximately fourteen months. This is too short a period to warrant an unrestricted ability to practice medicine in this state. A period of monitored probation is essential to assure that Respondent's recovery is maintained.

Insofar as Respondent is not currently registered in New York, the Hearing Committee unanimously determined that Respondent's license should be suspended until such time as he determines to return to New York state to practice medicine. Respondent shall be required to give written notice of such fact

to the Director of the Office of Professional Medical Conduct ninety days before returning to the active practice of medicine in this state. Thereafter, Respondent shall be placed on probation and monitored for a period of five years. The Hearing Committee believes that this sanction will adequately protect the people of this state, and allow Respondent the opportunity to demonstrate his long-term commitment to sobriety and the practice of medicine.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED**, until such time as Respondent seeks to return to the active practice of medicine in New York State. Respondent shall be required to notify the Director of the Office of Professional Medical Conduct ninety days before returning to the practice of medicine in this state. Thereafter, the suspension shall be stayed and Respondent shall be placed on probation for a period of five years. During the period of probation, Respondent shall be monitored under terms determined by the Director of the Office of Professional Medical Conduct in accordance with Public Health Law §230(18)(a).

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service

shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
10/4/96, 1996

REDACTED

RICHARD PIERSON, Jr., M.D. (CHAIR)

ANTHONY CLEMENDOR, M.D.
EUGENIA HERBST

TO: Dianne Abeloff, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Paul Eli Nathan, M.D.

REDACTED

Regina O. Matthews, Esq.
Martzell & Bickford
338 Lafayette Street
New Orleans, LA 70130

APPENDIX I

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

IN THE MATTER
OF
PAUL ELI NATHAN, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: PAUL ELI NATHAN, M.D.

REDACTED

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 September 10, 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, Coming 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
July 27, 1996

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Dianne Abeloff
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
PAUL ELI NATHAN, M.D.

STATEMENT
OF
CHARGES

PAUL ELI NATHAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 2, 1990, by the issuance of license number 182659 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about March 22, 1996, after a hearing, the Louisiana State Board of Medical Examiners (Board) found that Respondent abused drugs and alcohol for two thirds of his life, and he had demonstrated an ability to circumvent all of the tests and safeguards inherent in the program of the Physicians Health Committee contract. They also found that Respondent had been drug and alcohol free for five months at the time of the hearing, but the Board found that period was not sufficient to allow Respondent to return to the practice of medicine.

The Board ordered that Respondent's license to practice medicine in Louisiana be suspended for a period of one year, beginning October 2, 1995; at the end of the suspension, Respondent shall be evaluated in an in-patient psychiatric program; Respondent shall remain in the Physicians Health Committee Program; Respondent's DEA license shall be suspended for a period of five years; and, at the end of his one year suspension, and following his evaluation, Respondent shall make a personal appearance before the

Board, at which time the Board may impose such additional sanctions as it may see fit.

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)(b)(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 (8), being a habitual abuser of alcohol and narcotics), as alleged in the facts of the following:

1. Paragraph A.

DATED: July 27, 1996
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct