



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

May 10, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Trichur S. Narayanaswamy, M.B.B.S.
13265 La Miranda Circle
Wellington, Florida 33414

Robert Bogan, Esq.
Associate Counsel
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180

PUBLIC

RE: In the Matter of Trichur S. Narayanaswamy, M.B.B.S.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-100) 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.

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.

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.

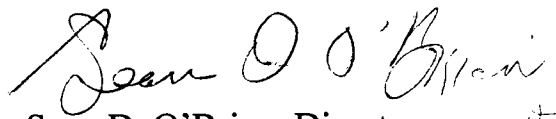
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:
Enclosure

IN THE MATTER
OF
**TRICHUR S. NARAYANASWAMY,
M.B.B.S.**

COPY

DETERMINATION

AND

ORDER

BPMC No. 04-100

A Notice of Referral Proceeding and Statement of Charges, both dated February 17, 2004, were served upon the Respondent, **TRICHUR S. NARAYANASWAMY, M.B.B.S.** **JOEL H. PAULL, D.D.S., M.D.**, Chairperson, **SHELDON H. PUTTERMANN, M.D.** and **MS. FRANCES TARLTON**, 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 April 21, 2004, 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 **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent, although duly served with notice of the time and place of the hearing, did not attend in person.

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 that 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d), based upon actions constituting violations of subdivisions (4) and (6). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

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 exhibits, denoted by the prefix "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.

1. **TRICHUR S. NARAYANASWAMY, M.B.B.S.**, the Respondent, a board certified surgeon, was authorized to practice medicine in New York State on April 1, 1997, by the issuance of license number 130429 by the New York State Education Department (Ex. 4).
2. On October 21, 2003, the State of Florida Board of Medicine approved a Consent Agreement between Respondent and the State of Florida Department of Health wherein Respondent agreed to a permanent restriction of his license to the practice of family or internal medicine for a charitable institution, the payment of a \$5,000 fine, payment of costs totaling \$1,548.72 and issuance of a Letter of Concern. This agreement resolved an administrative complaint against Respondent alleging that, during adrenal tumor removal surgery, while attempting to remove adrenal tissue for biopsy, he incorrectly removed pancreatic tissue, and that he had clipped the left renal vein, causing the patient's left kidney to become non-functional (Ex. 5).
3. On February 18, 2004, the Department sent to Respondent the Notice of Referral Proceeding, Statement of Charges and summary of the Health Department hearing regulations by Certified Mail. Personal service on Respondent was unsuccessful on 9 or 10 attempts. Respondent was also served on two occasions by regular mail. Respondent received the Department's documents, and requested and received an adjournment of the initial hearing date so he could determine whether he would appear at the hearing in person. On April 12, 2004, the Department's attorney received a letter

from Respondent indicating that he was retired from the practice of medicine, and requesting a sanction similar to that imposed by the State of Florida (Ex.'s 2,3,6 and A).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Florida Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(d), in that the conduct would have constituted misconduct in New York, had it been committed here, under

- New York Education Law §6530(4) (gross negligence); and/or
- New York Education Law §6530(6) (gross incompetence);

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

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

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION AS TO PENALTY

The record in this case establishes that Respondent agreed, among other things, to have his Florida license restricted to the practice of family or internal medicine for a charitable institution (giving up his right to perform surgery) after he made two serious errors during surgery to remove an adrenal tumor. The Florida Consent Agreement states

that there were factors in mitigation leading to the stipulated disposition, namely that Respondent recognized his responsibility for the errors, that he had resigned all his hospital surgical privileges, that he had closed his private office and substantially retired from the practice of medicine but that he wished to keep his license in order to provide charitable medical services, and that this was the only incident that had led to discipline by the Board

The Hearing Committee agrees that a disposition comparable to that Respondent agreed to in Florida is appropriate in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The medical license of **TRICHUR S. NARAYANASWAMY, M.B.B.S.** is hereby restricted to the practice of non-surgical medicine in a charitable setting.

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

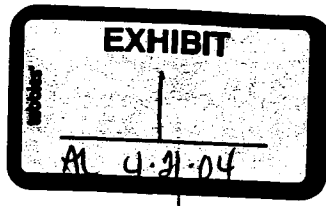
DATED: Eggertsville, New York
5/7, 2004



JOEL H. PAULL, D.D.S., M.D.
Chairperson

SHELDON H. PUTTERMANN, M.D.
MS. FRANCES TARLTON

APPENDIX 1



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

IN THE MATTER
OF
TRICHUR S. NARAYANASWAMY, M.B.B.S.
CO-03-12-5634-A

NOTICE OF
REFERRAL
PROCEEDING

TO: TRICHUR S. NARAYANASWAMY, M.B.B.S.
13265 La Miranda Circle
Wellington, FL 33414

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 18th day of March 2004, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 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.

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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before March 8, 2004.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before March 8, 2004, 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 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: Albany, New York

February 17, 2004



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

TRICHUR S. NARAYANASWAMY, M.B.B.S.
CO-03-12-5634-A

STATEMENT

OF

CHARGES

TRICHUR S. NARAYANASWAMY, M.B.B.S., the Respondent, was authorized to practice medicine in New York state on April 1, 1977, by the issuance of license number 130429 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 18, 2003, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), restricted Respondent's practice of medicine to performance of community service to a community recognized charitable institution in the area of family or internal medicine, imposed a \$5,000.00 administrative fine and \$1,548.72 costs of reimbursement, and issued a letter of concern, based on removing tissue from the wrong organ and clipping the left renal vein during the procedure.

B. The conduct resulting in the Florida Board disciplinary action 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(4) (gross negligence); and/or
2. New York Education Law §6530(6) (gross incompetence).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken 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, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *February 17*, 2004
Albany, New York


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