



# 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

*Public*

April 28, 2006

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Arnaldo Francesco Trabucco, M.D.  
1549 North Meadows Court  
Columbus, IN 47203

Nathan L. Dembin, Esq.  
Nathan L. Dembin & Associates, P.C.  
225 Broadway  
Suite 1400  
New York, New York 10007

Robert Bogan, Esq.  
NYS Department of Health  
Hedley Park Place  
433 River Street, Suite 303  
Troy, New York 12180

**RE: In the Matter of Francesco Trabucco, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 06-92) 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 Respondent 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.

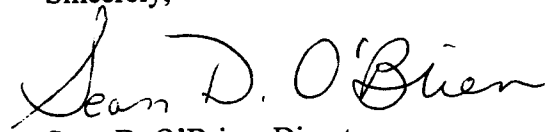
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Sean D. O'Brien". The signature is written in dark ink and is positioned above the printed name and title.

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah

Enclosure

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

IN THE MATTER  
OF  
**ARNALDO FRANCESCO TRABUCCO,  
M.D.**

DETERMINATION

AND

ORDER

BPMC #06-92

**COPY**

A Commissioner's Summary Order dated September 7, 2005, and a Notice of Referral Proceeding and Statement of Charges, both dated February 10, 2006, were served upon the Respondent, **ARNALDO FRANCESCO TRABUCCO, M.D.**. **RICHARD N. ASHLEY, M.D.**, Chairperson, **ARSENIO G. AGOPOVICH, M.D.** and **MR. JAMES J. DUCEY**, 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 20, 2006, 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.**, of Counsel. The Respondent appeared in person and by **NATHAN L. DEMBIN, ESQ.**

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 in part 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)(a)(iii) (conviction of a crime in another state), and pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (2), (16), and (24). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

This case was also brought pursuant to Public Health Law §230(12)(b), which, among other things, authorizes the Commissioner of the New York State Department of Health ("the Commissioner") to issue a summary suspension prohibiting a licensee from practicing pending a hearing when the duly authorized professional disciplinary agency of another jurisdiction has made a finding substantially equivalent to a finding that the practice of medicine by the licensee in that jurisdiction constitutes an imminent danger to the health

of its people, pending completion of disciplinary proceedings in the other state and the conduct of a hearing in New York State.

### WITNESSES

For the Petitioner:

None

For the Respondent:

Respondent  
Pamela Trabucco  
Pauline Mayer

### 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. **ARNALDO FRANCESCO TRABUCCO, M.D.**, the Respondent, was authorized to practice medicine in New York State on June 17, 1986, by the issuance of license number 166371 by the New York State Education Department. (Ex. 5)
2. On June 6, 2005, the Medical Licensing Board of Indiana ("the Indiana Board") issued an order summarily suspending Respondent's license in that state after he was arrested for various offenses related to the possession of marijuana, on the ground that he represented a clear and immediate danger to the public health and safety if allowed to continue practicing. (Ex. 1)

3. On September 7, 2005, the Commissioner issued the Summary Order referred to above, suspending Respondent's New York license on the ground that the Indiana Board had made a finding substantially equivalent to a finding that Respondent's continued practice constituted an imminent danger to the health, safety and welfare of its people. (Ex. 1)
4. On November 3, 2005, the Indiana Board issued "Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order", wherein the Board vacated its suspension of Respondent's license, and instead fined Respondent \$2,000.00 and placed him on a minimum of two years probation, based upon his knowing violation of a state statute governing the practice of medicine, in that he failed to exercise reasonable care and diligence in the treatment of a patient, namely his wife, and based upon his failure to keep abreast of current theory or practice. The Board made factual conclusions that Respondent was not dealing in marijuana, that he was using it to treat his wife, who suffers from Ramsey-Hunt Syndrome and other conditions, and that Respondent himself was not addicted and had no controlled substances in his blood when tested. (Ex. 6)
5. On January 18, 2006, Respondent pled guilty to Possession of Marijuana, a Class A misdemeanor in the Bartholomew Superior Court I, and was sentenced to one year in jail, suspended, one year probation, and the imposition of various fees. (Ex. 7)

#### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that by being convicted of the crime of possession of marijuana in Indiana, Respondent committed misconduct in New York under Education Law Section 6530(9)(a)(iii), since possession of marijuana is a crime in New York State.

Furthermore, the conduct resulting in the Indiana Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(b) and (d), in that the conduct would have constituted misconduct in New York, had it been committed here, under:

- New York Education Law §6530(2) (practicing the profession beyond its authorized scope);
- New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine); and
- New York Education Law §6530(24) (practicing beyond the scope permitted by law);

### **VOTE OF THE HEARING COMMITTEE**

#### **SPECIFICATIONS**

##### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by having been convicted of a crime in another state, where the conduct would also have constituted a crime under the laws of New York State.

**VOTE: SUSTAINED (3-0)**

##### **SECOND 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)**

### THIRD 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

The record in this case establishes that Respondent's New York medical license was suspended after it was suspended by the Indiana Board, the Indiana suspension having resulted from Respondent's arrest on marijuana charges. The original charges included dealing in marijuana, based upon the number of plants found growing in Respondent's home and the presence of marijuana growing apparatus, the amount of cash on hand, and other factors.

Ultimately, the Indiana Board became convinced (as did the criminal court) that Respondent was not using drugs himself, that he was not dealing in drugs, and that "...he was using it to treat his wife, Pamela, who has been suffering from Ramsey-Hunt Syndrome as well as several other documented illnesses." (Ex. 6; see also the favorable letter from the prosecuting attorney in Ex. A). For this reason, the Indiana Board lifted its suspension, and the Hearing Committee concludes that the lifting of the New York suspension is also in order, because Respondent's continued practice does not present a danger to the health or safety of New York residents.

The Indiana Board concluded that Respondent was treating his wife with marijuana, and that finding is binding on this tribunal, despite Respondent's assertion that, essentially,



his wife was treating herself and that his role was in merely allowing her to do so. The Indiana Board's findings support the conclusion that the conduct, if committed in New York, would be misconduct under both Education Law §6530(2) and (24), since physicians are prohibited by Public Health Law §3306 and §3330 from dispensing, possessing or prescribing marijuana. It is clear that the use of marijuana to treat a patient constitutes the practice of medicine beyond its authorized scope and beyond the scope permitted by law. In addition, the Indiana Board found that Respondent willfully violated state statutes governing the practice of medicine, and Respondent's conduct therefore constituted misconduct under Education Law §6530(16), cited above. In addition, the criminal conviction constitutes misconduct under Education Law §6530(9)(a)(iii).

The issue remaining to be decided is what penalty should be imposed in New York State for Respondent's misconduct. In this regard, the Hearing Committee has considered but rejected any penalties that involve any further limitations on Respondent's right to practice, such as revocation or suspension of Respondent's license. Such penalties are not necessary to protect the residents of New York from future misconduct by Respondent, as evidenced by a report from the Talbott Recovery Campus, where Respondent underwent a thorough evaluation, that the assessment "...found no evidence of impairment and, therefore [Respondent] is safe to continue to practice medicine."

Respondent's wife testified that she tried marijuana as what she felt was a last resort to deal with the intractable pain and other unpleasant sensations and manifestations associated with her condition, and that it was more effective than the other medications she had been prescribed over the course of years (she is allergic to opiates). Respondent testified that he reluctantly accepted this use of marijuana, and permitted (and even participated in) the growing of the plant in his home out of a desire to afford his wife some

relief from her condition, despite his own reservations about the growing and use of marijuana for that purpose.

Given the availability of other medications now on the market for Respondent's wife's condition, and given the serious consequences that flowed from the arrest, including a significant diminution in Respondent's ability to practice at the level he had previously, the Hearing Committee is convinced that the likelihood of Respondent repeating the conduct that led to his difficulties is extremely low. The Hearing Committee was impressed with Respondent's credentials, reputation among colleagues and with the high regard in which he is held by his patients (see Ex.'s A & B), and concludes that he should be afforded the opportunity to continue to practice without restriction in New York. However, Respondent has committed misconduct, and the Hearing Committee concludes that the appropriate penalty for this misconduct is the issuance of a Censure and Reprimand.

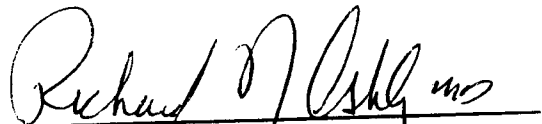
ORDER

IT IS HEREBY ORDERED THAT:

1. A CENSURE AND REPRIMAND is hereby issued against the medical license of **ARNALDO FRANCESCO TRABUCCO, M.D.**

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

DATED: Garden City, New York  
April 26, 2006

  
RICHARD N. ASHLEY, M.D.  
Chairperson

ARSENIO G. AGOPOVICH, M.D.  
MR. JAMES J. DUCEY

# **APPENDIX 1**

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

IN THE MATTER  
OF  
ARNALDO FRANCESCO TRABUCCO, M.D.  
CO-05-06-3003-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: ARNALDO FRANCESCO TRABUCCO, M.D.  
1549 North Meadows Court  
Columbus, IN 47203

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure 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 22<sup>nd</sup> day of March 2006, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> 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, 5<sup>th</sup> 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 13, 2006.

Pursuant to the provisions of New York 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 13, 2006, 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 10*, 2006



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  
ARNALDO FRANCESCO TRABUCCO, M.D.  
CO-05-06-3003-A

---

STATEMENT  
OF  
CHARGES

ARNALDO FRANCESCO TRABUCCO, M.D., the Respondent, was authorized to practice medicine in New York state on June 17, 1986, by the issuance of license number 166371 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about November 3, 2005, Medical Licensing Board of Indiana (hereinafter "Indiana Board"), by a Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order (hereinafter "Indiana Order"), vacated the summary suspension previously imposed on Respondent's license to practice medicine, imposed a \$2,000.00 civil fine, and placed his license to practice medicine on INDEFINITE PROBATION for a minimum of two (2) years under TERMS and CONDITIONS, that include inter alia, that he complete six hours of CME, that he obtain a psychological examination, and that he obtain approval of the Indiana Board prior to the start of any medical practice, based on knowingly violating a state statute or rule, or federal statute or regulation, in that he failed to exercise reasonable care and diligence in the treatment of patients (specifically, his wife), based upon generally accepted scientific principles, methods, treatments, and current professional theory and practice.

B. On or about December 22, 2005, in the Bartholomew Superior Court I, Respondent was found guilty, based on a plea of guilty, of Criminal Possession of Marijuana, a Class A misdemeanor, and on or about January 18, 2006, was sentenced to one (1) year jail, suspended, one (1) year probation with terms and conditions, and that he pay \$861.00 in fees and court costs.



C. The conduct resulting in the Indiana 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(2) (practicing the profession beyond its authorized scope);
2. 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); and/or
3. New York Education Law §6530(24) (practicing beyond the scope permitted by law).

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph B.

#### **SECOND 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:


2. The facts in Paragraphs A and/or C.

**THIRD SPECIFICATION**

Respondent violated New York State 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 of New York state, in that Petitioner charges:

3. The facts in Paragraphs A and/or C.

DATED: *February 10*, 2006  
Albany, New York

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