



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

December 21, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony M. Begnino, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

T. Lawrence Tabak, Esq.
Kern, Augustine, Conroy &
Schoppmann, P.C.
420 Lakeville Road
Lake Success, New York 11042

Kristina Dahl, M.D.
19 Portland Place
Montclair, New Jersey 07042

RE: In the Matter of Kristina Dahl, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-306) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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.

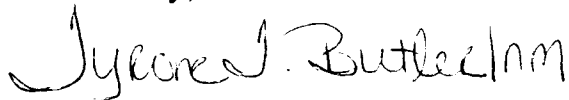
The notice of review served on the Administrative Review Board should be forwarded to:

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, reading "Tyrone T. Butler/nm". The signature is fluid and cursive, with the initials "nm" at the end.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER

-OF-

KRISTINA DAHL, M.D.

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE

COPY

BPMC ORDER

NO. 98 - 306

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated August 7, 1998 which were served upon **KRISTINA DAHL, M.D.**, (hereinafter referred to as "Respondent"). **JOHN H. MORTON, M.D.**, Chairperson, **J. LaRue WILEY, M.D.**, and **REV. THOMAS KORNMEYER**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on October 7, 1998 at Hedley Park Place, Troy, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner" or "the Board") appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ANTHONY M. BENIGNO, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct. Respondent appeared by Kern Augustine Conroy & Schoppmann, P.C., **T. LAWRENCE TABAK**, of counsel. Respondent did not appear in person. Evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530 (9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(c) (having been found guilty in an adjudicatory proceeding of violating a state regulation, pursuant to a final decision or determination, and when no appeal is pending, and when the violation would constitute professional misconduct). The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

Respondent submitted a written answer which is attached hereto as Appendix Two.

FINDINGS OF FACT

The Committee adopts the factual statements set forth on pages five through seven of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS SPECIFICATIONS AND PENALTY

The State has established the elements of the charges by clear and convincing evidence.¹ The relevant points are these:

1. On September 5, 1990 the New York State Department of Social Services (DSS) determined to exclude her from the Medicaid program for a period of at least two years. This exclusion was based upon a review of twenty-two (22) patient charts and arguments submitted by Respondent
2. In a decision dated December 13, 1994 the Office of Administrative Hearings found that Respondent violated several DSS regulations:
 - a. [18 NYCRR part 51 5.2(b)(1)(I)(a) submitting, or causing to be submitted, a claim or claims for unfurnished medical care, services or supplies];
 - b. 515.2(b)(1)(I)(c) [submitting, or causing to be submitted, a claim or claims for medical care, services or supplies provided at a frequency or in an amount not medically necessary];
 - c. 51 5.2(b)(6) [unacceptable record keeping];

¹ This is a higher standard than is required by the relevant statute. The Committee found that the evidence was stronger than that required to meet the burden of proof.

- d. 51 5.2(b)(11) [excessive services].
3. Respondent commenced an Article 78 proceeding to review the determination of the Commissioner of Social Services. On July 17, 1997 the Supreme Court, Appellate Division, Third Judicial Department, confirmed the determination of the Commissioner and dismissed Respondent's Article 78 proceeding.
 4. Respondent's Violation of 18 NYCRR Parts 51 5.2(b)(1)(I)(a) and © constituted fraud as set forth in Education Law Section 6530(2). In the decision rendered by the Commissioner of Social Services designee, Respondent was found guilty of violating 18 NYCRR parts 51 5.2(b)(1)(a) and (c). She submitted or caused to be submitted, a claim or claims for unfurnished medical care, services and supplies as well as for medical care, services or supplies provided at a frequency or in an amount not medically necessary (See Administrative Hearing Decision at page 15, hereinafter designated as AHD:15);
 5. Respondent's violation of 18 NYCRR PARTS 51 5.2(b) constituted willfully filing a false report as set forth in to Education Law Section 6530(21). The Commissioner of Social Services found that Respondent submitted bills to the Department of Social Services (DSS) for services not rendered to patients (AHD:11, AHD:15) and in a frequency which was not justified by the medical condition of the patient;
 6. Respondent's violation OF 18 NYCRR PART 515.2(b)(6) constituted a failure to maintain accurate records as set forth in Education Law Section 6530(32). The hearing decision is replete with examples of Respondent's failure to maintain accurate records for each patient (AHD:7-12). Respondent failed to document the necessity for the tests ordered. The Appellant ordered and performed literally hundreds of tests and procedures without any medical necessity (AHD:12);
 7. Respondent's violation of 18 NYCRR Part 515.2(b)(11) constituted ordering of excessive tests or treatment set forth in Education Law Section 6530(35). Respondent ordered numerous blood tests for 21 out of the 22 patients in the sample regardless of the patients specific complaints or any physical findings or diagnoses (AHD:9). Respondent herself admitted that certain of these tests were not medically necessary (AHD:10). Respondent ordered an echocardiogram for 21 out of 22 patients in the sample without regard to their history, symptoms or her own findings. (AHD:11). Respondent ordered abdominal sonograms for 21 out of 22 patients in the sample wherein. These patient charts do not document the medical basis and specific need for these sonograms (AHD:12). Respondent prescribed medication for twenty-two and twenty-one patients, respectively, for asthma and ulcer or gastritis without any medical justification (AHD:13).

The State has proven that Respondent was found guilty of violating regulations and the violations were sustained on appeal. The Committee now turns its attention to what, if any, penalty

to impose. Respondent would have this body believe that the violations described above are merely record keeping errors and hence, are not serious. The Committee rejects this contention and finds that the charges established constitute a serious pattern of intentional fraud and theft.

Respondent stole money from the government. Rather than providing medical care to the patients cited, Respondent used them as a tool for personal enrichment. She exposed these patients to the risks and discomfort of unnecessary tests and procedures. Again, she placed the well being of her patients beneath her desire for illegal personal pecuniary gain. To obtain the funds Respondent stole, she committed fraud and failed to keep accurate records. By committing fraud, Respondent betrayed the trust bestowed upon her by her patients and the government, as well as the public at large. The failure to keep accurate records is a serious violation of accepted standards of medical care by any reasonable definition of the concept. This is particularly true in a clinic situation where a patient may be under the care of more than one practitioner. Furthermore, the purpose of medical records is to protect the patient and assist in care. Medical records are not created for the illegal personal gain of physicians.

Having so found, the Committee concludes that there are also clear elements of moral turpitude in the acts of Respondent. Respondent betrayed her trust as a physician in two ways. First, the government, the patients, and the public at large, had a right to expect truthful and accurate records and claims from this and all physicians. Second, the patients had the right to expect a physician to order tests procedures and medications motivated by a desire for their medical benefit rather than the pecuniary benefit of the physician.

It also must be pointed out that Respondent has offered absolutely no evidence of rehabilitation or contrition. Indeed, Respondent did not consider this proceeding sufficiently important to appear in person. She was absent at the hearing and gave no reason for her absence.

While the Committee recognizes Respondent's right to remain silent, the failure to appear in person and without explanation cannot be ignored. The Committee wishes to point out that their findings regarding the charges and specifications were in no way effected by Respondent's failure to appear in person. The point simply goes to the severity of penalty.

Having found serious levels of medical misconduct and an utter void of mitigation, the Committee finds that revocation is the appropriate penalty in this matter.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the state of New York is hereby **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

4. This order shall take effect **UPON RECEIPT** by Respondent or her attorney or **SEVEN (7) DAYS** after mailing of this order by Certified Mail to Respondent or her attorney.

Dated:
Troy, New York

December 15, 1998


JOHN H. MORTON, M.D., Chairperson,

**J. LaRue WILEY, M.D.,
REV. THOMAS KORNMEYER,**

TO:

ANTHONY M. BEGNINO ESQ.

Assistant Counsel

Bureau of Professional Medical Conduct

Corning Tower

Albany, N.Y. 12237

T. LAWRENCE TABAK, ESQ.

Kern Augustine, Conroy and Schoppmann, P.C.

420 Lakeville Road

Lake Success, New York 11042

KRISTINA DAHL, M.D.

19 Portland Place

Montclair, New Jersey 07042

APPENDIX ONE

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

-----x
IN THE MATTER : NOTICE OF
OF : REFERRAL
KRISTINA DAHL, M.D. : PROCEEDING
-----x

TO: KRISTINA DAHL, M.D.
19 Portland Place
Montclair, NJ 07042

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 16th day of September, 1998 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 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 4, 1998.

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 or 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 September 4, 1998 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
August 7, 1998

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

Inquiries should be addressed to:

ANTHONY M. BENIGNO
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
KRISTINA DAHL, M.D. : CHARGES

-----X

KRISTINA DAHL, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 4, 1988, by the issuance of license number 173850 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. In a decision issued on December 13, 1994, after an Administrative Hearing held by the New York State Department of Social Services, Respondent was found to have violated various regulations enumerated in Title 18 of the New York Code of Rules and Regulations (NYCRR).

B. On July 17, 1997 the New York Supreme Court, Appellate Division, Third Judicial Department, upheld the decision of the Administrative Law Judge and dismissed the Respondent's Article 78 petition.

C. Respondent violated 18 NYCRR Part:

1. 515.2(b)(1)(i)(a), false claims, submitting, or causing

to be submitted, a claim or claims for unfurnished medical care, services or supplies. In that Respondent from November, 1989 through March, 1990 on twelve (12) separate patients, billed for twelve(12) lead eclectro-cardiograms(ECG) when, in fact, those ECG's did not contain 12 leads. Additionally, during the same period, for twenty-one(21) patients Respondent billed for an ECG with interpretations and reports and the patient charts did not contain any interpretation or report of the ECG;

2. 515.2(b)(1)(i)(c), false claims, submitting, or causing to be submitted, a claim or claims for medical care provided at a frequency or in an amount not medically necessary. Respondent from November, 1989 through March, 1990 for twenty-one(21) patients performed ECGs without regard to their medical history, symptoms or her own findings. During this same period, the Respondent ordered a basic profile, consisting of numerous blood tests, for 21 patients regardless of the patients' specific complaints or physical findings or diagnoses. Additionally, Respondent ordered abdominal sonograms for twenty-one(21) patients without any medical justification. Additionally, Respondent performed breathing tests for twenty-two(22) patients without any medical justification. Additionally, Respondent prescribed medication for twenty-two (22) and twenty-one (21) patients, respectively, for asthma and ulcer or gastritis without any medical justification;

3. 515.2(b)(6), unacceptable record keeping. Respondent from November, 1989 through March, 1990 purportedly performed

twenty-one(21) ECGs with interpretations and reports and the patient charts did not contain any interpretation or report of the ECGs. Additionally, the patients' charts do not indicate an adequate history and/or physical examination sufficient to warrant an ECG. Respondent ordered abdominal sonograms for twenty-one(21) patients whose charts do not contain adequate histories and/or physical examinations warranting said sonograms;

4. 515.2(b)(11), excessive services. Respondent from November, 1989 through March, 1990 for twenty-one(21) patients performed ECGs without regard to their medical history, symptoms or her own findings. During this same period, Respondent ordered a basic profile, consisting of numerous blood tests, for 21 patients regardless of the patient's specific complaints or physical findings or diagnoses. Additionally, Respondent ordered abdominal sonograms for twenty-one(21) patients without any medical justification. Additionally, Respondent prescribed medication for twenty-two (22) and twenty-one (21) patients, respectively, for asthma and ulcer or gastritis without any medical justification.

D. Respondent's violation of the aforesaid regulations constitutes professional misconduct pursuant to N.Y. Education Law §6530(2)(21)(32) and/or (35).

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY IN AN ADJUDICATORY PROCEEDING OF VIOLATING A REGULATION

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(9)(c) (McKinney Supp. 1998) by having been found guilty in an adjudicatory proceeding of violating a state regulation, pursuant to a final decision or determination, and when no appeal is pending, and when the violation would constitute professional misconduct pursuant to this section, in that the Petitioner charges:

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

DATED: *August 7*, 1998
Albany, New York

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

Inquiries should be addressed to:

ANTHONY M. BENIGNO
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237
(518) 473-4282

APPENDIX TWO

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

IN THE MATTER

OF

KRISTINA DAHL, M.D.

ANSWER TO

STATEMENT

OF CHARGES

Respondent Kristina Dahl, M.D., by her attorneys, Kern, Augustine, Conroy & Schoppmann, P.C., answers the Statement of Charges of the Bureau of Professional Medical Conduct as follows:

1. Admits that Respondent was authorized to practice medicine in New York State on or about March 4, 1988, by the issuance of License No. 173850 by the New York State Education Department.
2. Denies each and every allegation contained in Paragraph A of the Statement of Charges except admits that a decision was issued on December 13, 1994, by the New York State Department of Social Services.
3. Admits Paragraph B of the Statement of Charges.
4. Denies each and every allegation contained in Paragraph C.1, C.2, C.3 and C.4 of the Statement of Charges.
5. Denies Paragraph D of the Statement of Charges.

6. Denies the First Specification as contained in the Statement of Charges.

DATED: Lake Success, New York
September 4, 1998

Kern, Augustine, Conroy &
Schoppmann, P.C.
Attorneys for Respondent
420 Lakeville Road
Lake Success, New York 11042
516-326-1880

By: 

T. Lawrence Tabak

TO: Bureau of Adjudication
Hedley Park Place - 5th Floor
433 River Street
Troy, New York 12180

Anthony M. Benigno, Esq.
Assistant Counsel
New York State Department of Health
Division of Legal Affairs
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