

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

Allan David Nachlis, Physician
1712 Sue Ellen Drive
Havertown, Pennsylvania 19083

July 31, 1991

Re: License No. 078863

173275

Dear Dr. Nachlis:

Enclosed please find Commissioner's Order No. 11869. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation, surrender, or a actual suspension (suspension which is not wholly stayed) of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

Gustave Martine

GUSTAVE MARTINE
Supervisor

DJK/GM/er

CERTIFIED MAIL - RRR

cc: Philip M. Gassel, Esq.
Epstein, Becker & Green, P.C.
250 Park Avenue
New York, N.Y. 10177

REPORT OF THE
REGENTS REVIEW COMMITTEE

ALLAN DAVID NACHLIS

CALENDAR NO. 11869



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

ALLAN DAVID NACHLIS

No. 11869

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

ALLAN DAVID NACHLIS, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On May 17, 1991, respondent appeared before us in person and was represented by his attorney, Philip M. Gassel, Esq. Paul Stein, Esq., represented the Department of Health.

Petitioner's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was two year suspension, stayed, and probation.

Respondent's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was none, an admonition or a warning.

We have reviewed the record in this matter; and our unanimous findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed follow:

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician by the New York State Education Department.
2. Respondent was convicted in the Court of Common Pleas, County of Alleghany, Criminal Division, Commonwealth of Pennsylvania, of Simple Assault in violation of 18 PA. CONS. STAT. §2701, as set forth in the amended statement of charges and the record herein.
3. Respondent has been convicted of committing an act constituting a crime under the law of another jurisdiction which would, if committed in New York State, constitute the crime under New York Penal Law §§110.00/120.00 of Attempted Assault in the Third Degree.

DETERMINATION AS TO GUILT

The amended charge, annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven as indicated herein, by a preponderance of the evidence; and respondent is guilty thereof.

The original and amended statement of charges both allege respondent committed professional misconduct pursuant to Education Law §6509(5)(a)(iii). The original statement of charges did not describe the Pennsylvania conviction as being one for Simple Assault and did not allege the New York analogue crime of Attempted Assault in the Third Degree under Penal Law §§110.00/120.00. These and other allegations are included in the amended statement of

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charges which allege three alternative sections of the Penal Law as the applicable analogue to the relevant Pennsylvania Law.

Respondent's answer and brief related only to the original statement of charges and preceded the amended statement of charges. The introduction on page 1 of respondent's supplemental answer and brief describes the respects in which the original charges were amended. In response, petitioner's supplemental reply brief relies upon New York Penal Law §§110.00/120.00 as the appropriate New York analogue to respondent's Pennsylvania conviction.

We agree with petitioner that respondent is guilty of the specification in the amended statement of charges to the extent it is based upon the elements of the New York analogue of Penal Law §§110.00/120.00 being equivalent to the statutory violation upon which respondent was convicted. The Pennsylvania allocution shows that respondent was convicted for his attempting to strike the victim without her consent and with intent to cause bodily injury. If this had been committed in New York, respondent would have committed the crime of an Attempted Assault in the Third Degree. We note that the definition of "bodily injury" under 18 PA. CONS. STAT. §2301 is identical to the definition of "physical injury" under Penal Law §10.00(9).

The alternative analogues of the New York crimes of Assault in the Third Degree and Menacing are not equivalent to the crime of which respondent was convicted in Pennsylvania. Thus,

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respondent is not guilty solely to the extent of these two alternative New York analogues.

It is well settled that respondent may not attack the validity of the conviction at this Regents Review Committee hearing. In spite of respondent's concession on this point, respondent persists in attempting to show that his conduct differs from the acts upon which he was convicted. We will not relitigate respondent's Simple Assault conviction which remains in effect in Pennsylvania.

Petitioner correctly asserted that respondent has misapplied the holding in Dragan v. Commissioner of Education, 142 A.D.2d 846 (3rd Dept. 1988). Petitioner further asserted that it would be wrong and a very dangerous precedent for one to rely on the underlying conduct to which respondent pled guilty rather than on the elements of the sister state and New York crimes. Under Dragan, supra, it is impermissible for us, in a direct referral proceeding, to rely on underlying conduct by respondent which was not necessarily determined by the conviction in Pennsylvania. In this matter, inasmuch as the elements of the Pennsylvania and the New York crimes are equivalent, respondent is, in our unanimous opinion, guilty of having committed professional misconduct within the meaning of Education Law §6509(5)(a)(iii). Respondent has not shown any basis for barring this matter from being handled expeditiously.

Respondent's position is contradicted by the authority on

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which he relies. Matter of Moberg, Cal. No. 11004 and Madj-Pour, Cal. No. 10136, in concluding that the elements of the two statutes were not equivalent, do not construe the law as requiring us to "look beneath" respondent's crime to the underlying conduct on which the conviction was based. On the contrary, the decisions in both matters declare that, in a direct referral proceeding, we cannot "pierce the elements" of the sister state statute to search the record for extraneous evidence. We are limited, in a direct referral proceeding, where the charge under Education Law §6509(5)(a)(iii) has been established, to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Public Health Law §230(10)(m)(iv). The relevant Pennsylvania and New York statutes cited in the amended statement of charges are annexed hereto, made a part hereof, and marked as Exhibit "B".

**RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED**

Respondent be Censured and Reprimanded upon the charge of which respondent was found guilty.

In arriving at our recommendation as to the measure of discipline to be imposed, we have considered the entire record and the circumstances herein, including the conviction in January 1988 being almost three years before this proceeding was commenced; respondent's completion, without incident, of his Pennsylvania sentence of two years probation before this proceeding was

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commenced; the single incident involved; respondent's previously unblemished record; the undisputed fact that respondent continues to be fully licensed to practice medicine in the State where the conduct occurred and the criminal conviction has not resulted in the initiation there of any disciplinary proceedings against him; the New York analogue of Attempted Assault in the Third Degree being a Class B misdemeanor in comparison to the other alleged analogues, which are not accepted, being Class A misdemeanors; the respondent's receipt of counselling; and the character evidence adduced by respondent.

Respectfully submitted,

EMLYN I. GRIFFITH

SIMON J. LIEBOWITZ

JOHN T. MCKENNAN



Chairperson

Dated: July 15, 1991

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

-----X AMENDED
IN THE MATTER : STATEMENT
OF : OF
ALLAN DAVID NACHLIS, M.D. : CHARGES
-----X

ALLAN DAVID NACHLIS, M.D., the Respondent, was authorized to practice medicine in New York State on December 7, 1987 by the issuance of license number 173275 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine. His most recent registration expired on December 31, 1990. His most recent registration address is 1712 Sue Ellen Drive, Havertown, PA 19083.

SPECIFICATION
HAVING BEEN CONVICTED OF
AN ACT CONSTITUTING A CRIME

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law sec. 6509(5)(a)(iii) (McKinney 1985) in that he has been found guilty of committing an act constituting a crime under the law of another jurisdiction and which, if committed within the state, would have constituted a crime under New York State law, specifically:

EXHIBIT "A"

On or about January 20, 1988, Respondent was convicted in the Court of Common Pleas, County of Allegheny, Criminal Division, Commonwealth of Pennsylvania, after a plea of guilty to a criminal information, which, as amended, charged Respondent with:

Simple Assault, on or about June 19, 1987 in the County of Allegheny, in violation of 18 Pennsylvania Consolidated Statutes sec. 2701, a second degree misdemeanor.

On or about January 20, 1988, Respondent was sentenced to probation for a period of two years upon conditions that he pay the costs of prosecution and undergo and continue therapy with a mental health counselor, who was to submit a monthly report to the Probation office.

This act, if committed within New York State, would have constituted a crime under New York Penal Law sec. 120.00, Assault in the third degree, sec. 120.15, Menacing, or sec. 110.00/120.00, Attempted Assault in the third degree.

DATED: New York, New York
March 22, 1991



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK

ALLAN DAVID NACHLIS

CALENDAR NO. 11869



The University of the State of New York

IN THE MATTER

OF

ALLAN DAVID NACHLIS
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 11869

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 11869, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (July 26, 1991): That the record herein be accepted, that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of ALLAN DAVID NACHLIS, respondent, be accepted; that respondent is guilty of the amended charge, by a preponderance of the evidence, of being convicted in a sister state of Simple Assault involving his attempting to strike the victim without the victim's consent and with intent to cause bodily injury, which is analogous to the New York Class B misdemeanor of Attempted Assault in the Third Degree; that respondent be Censured and Reprimanded upon the charge of which respondent was found guilty; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

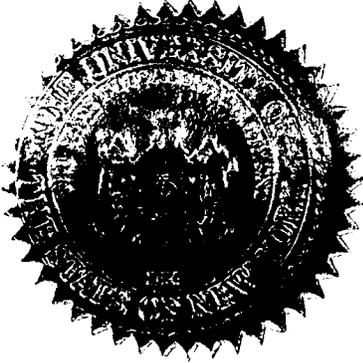
and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and SO ORDERED, and it is further

ALLAN DAVID NACHLIS (11869)

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 26th day of



July, 1991.
Thomas Sobol

Commissioner of Education