



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

Karen Schimke
Executive Deputy Commissioner

January 8, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ann Gayle, Esq.
NYS Department of Health
5 Penn Plaza Sixth Floor
New York, New York 10001

Bruce D. Babcock, M.D.
1177 California Street
Suite #924
San Francisco, California 94108

RE: In the Matter of Bruce Duffin Babcock, M.D.

Dear Ms. Gayle and Dr. Babcock:

Enclosed please find the Determination and Order (No. 97-12) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, stylized initial "T".

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-
BRUCE DUFFIN BABCOCK, M.D.
Respondent

DETERMINATION

AND

ORDER

BPMC-97-12

A Notice of Referral Proceeding and Statement of Charges, dated October 17, 1996, were served upon the Respondent, Harvey Maxwell Grant, M.D. **JERRY WAISMAN, M.D. (Chair), RANDALL GRIEPP, M.D. and GEORGE SIMMONS, Ed.D.** 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. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Ann Gayle, Associate Counsel. The Respondent did not appear in person or by counsel. Evidence was received, statements were 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). This statute provides for an expedited proceeding 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 prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding 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) (found guilty of misconduct by another state) and Education Law §6530(9)(d) (disciplinary action taken against the license by another state). The charges herein arise from Respondent admitting before the Medical Board of California, to failing to diagnose or treat and/or refer for diagnosis and treatment in a timely manner a patient of his who had cancer. The California Board revoked the Respondent's license, stayed the revocation and placed the Respondent on probation. Subsequently the Respondent's license was revoked for violations of his probation. The allegations in this proceeding are more particularly set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix One.

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 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. Bruce D. Babcock, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on July 1, 1948, by the issuance of license number 047769 by the New York State Education Department. (Pet. Exs. 1,2).

2. On or about September 15, 1994, the Medical Board of California adopted the Stipulation and Waiver Agreement executed by the Respondent and the State of California. (Pet. Ex. 3)

3. The Respondent was charged by the Medical Board of California with committing acts which constituted unprofessional conduct and he admitted this to be true. (Pet. Ex. 3)

4. The actions which were found by the Medical Board of California to constitute unprofessional conduct included a failure to diagnose or treat and/or refer for diagnosis and treatment in a timely manner, a patient of Respondent who had cancer notwithstanding complaints made by or on behalf of the patient the nature of which should have prompted such diagnosis and/or treatment or referral and the recommendation of a radiologist that old x-rays of the patient be sought since a current x-ray noted a probable upper lung granuloma. (Pet. Ex. 3)

5. The Medical Board of California revoked the Respondent's license, stayed the revocation and placed the Respondent on probation for three years. (Pet. Ex. 3)

6. On or about April 18, 1996, the Medical Board of California revoked Respondent's Physician and Surgeon's Certificate for violations of his terms of probation.
(Pet. Ex. 3)

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 Respondent was both found guilty of professional misconduct and had disciplinary action taken against his Physician and Surgeon's Certificate by a professional disciplinary agency of another state. The underlying conduct which was the basis for the finding by California would constitute professional misconduct in New York. Specifically, the Hearing Committee found the Respondent's actions would fall within the definitions of misconduct set forth at N.Y. Education Law §6530(4) (Practicing the profession with gross negligence on a particular occasion) and §6530(29) (Violating any term of probation).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be **revoked**. 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 based its determination on the seriousness of the stipulated misconduct committed in California and the Respondent's complete failure to fulfill the terms of his probation. Additionally the Respondent did not present any mitigating evidence for the Hearing Committee's consider. Respondent did not appear nor was he represented by counsel. The record contains no evidence about any efforts he may have made to comply with the California probation. It is the Hearing Committee's duty to protect the consumers of medical services of this state. The practice of medicine is a privilege to be bestowed on those who warrant it. The Respondent has not presented any evidence that he should be allowed to exercise this privilege. The Hearing Committee unanimously determined that the Respondent should not be afforded the privilege of practicing medicine in New York and that revocation is the only appropriate sanction under the circumstances.

ORDER

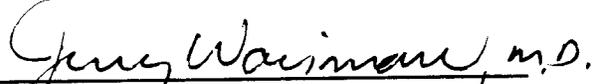
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Appendix I) are **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: New York, New York

1/6, 1997


JERRY WAISMAN, M.D. (CHAIR)
Randall Griep, M.D.
George Simmons, Ed.D.

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

Bruce D. Babcock, M.D.
1177 California Street
Suite #924
San Francisco, California 94108



APPENDIX I

IN THE MATTER
OF
BRUCE DUFFIN BABCOCK, M.D.

STATEMENT
OF
CHARGES

Bruce Duffin Babcock, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1948, by the issuance of license number 047769, by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. In a Stipulation, Waiver and Order Thereon, effective September 15, 1994, Respondent's license to practice medicine in the State of California, was revoked, but said revocation was stayed and Respondent was placed on probation for a period of three years, the terms of which were that Respondent, *inter alia*, reimburse the Medical Board of California \$2,500, take and pass an oral or written exam in the subject area of General Medicine within 90 days of September 15, 1994, and take an additional 25 hours per year of pre-approved C.M.E. courses beginning within 150 days of September 15, 1994. Respondent entered into said stipulation while misconduct charges were pending against him. Respondent admitted, for the purposes of the California Stipulation only, in said Stipulation, that there was a factual and legal basis for the imposition of discipline based on a finding of gross negligence as set forth under Business and Professions Code §2234(b) pursuant to the allegations in the Accusation regarding patient P.N. Those accusations were, *inter alia*, that despite Respondent having treated patient P.N. on many occasions during a seven month period from February 26, 1986

through September 24, 1986, during which she and others on her behalf made complaints and she exhibited signs and symptoms of, *inter alia*, persistent sore throat and hoarseness, a radiologist recommended that old films of prior chest X-rays be sought since a current X-ray noted a probable upper lung granuloma, Respondent failed to perform and/or refer patient P.N. for the performance of appropriate laboratory tests, radiographic examinations and/or other tests in a timely manner or at all, and he failed to diagnose or treat and/or refer for diagnosis and treatment, patient P.N.'s infiltrating squamous cell carcinoma (cancer) in a timely manner or at all.

- B. On or about March 19, 1996, the Medical Board of California, Department of Consumer Affairs, State of California, ordered Respondent's license to practice medicine in the State of California revoked on the grounds that Respondent violated each and every term of the aforesaid probation, in violation of the Medical Practices Act (Business and Professions Code) §2221(c).

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 §§ 4 and 29)

as alleged in the facts of the following:

1. Paragraphs A and B.

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1996) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(4 and 29)) as alleged in the facts of the following:

2. Paragraphs A and B.

DATED: October **21**, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct