



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

August 11, 1994

AUG 18 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rafael A. Calabria, M.D.
Route 1, Box 428
Nevada, Missouri 64772

Denise Lepicier, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Not Appealed
Effective Date: 8/18/94

RE: In the Matter of Rafael A. Calabria, M.D.

Dear Dr. Calabria and Ms. Lepicier :

Enclosed please find the Determination and Order (No. 94-144) of the Hearing Committee in the above referenced matter.¹ 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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), "(t)he

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 all action 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
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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 "Tyrone T. Butler". To the right of the signature, there are some initials or a mark that appear to be "W U N".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF :
RAFAEL A. CALABRIA, M.D. : ORDER
-----X
NO. BPMC-94-144

A Notice of Hearing and Statement of Charges, both dated April 6, 1994 were served upon the Respondent, Rafael A. Calabria, M.D. ROBERT J. O'CONNOR, M.D. (Chair), JAY I. POMERANTZ, M.D., and LYNNE HENNECKE, Ph.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. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Denise Lepicier, Esq., Assistant Counsel. The Respondent appeared *pro se*. A hearing was held on July 14, 1994. Evidence was received and witnesses sworn and 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). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §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 which 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, Respondent is charged with professional misconduct, pursuant to Education Law §6530(9)(a)(ii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

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 transcript page numbers or 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. Rafael A. Calabria, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York

State on March 16, 1971 by the issuance of license number 108093 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. (Pet. Ex. #2).

2. On or about April 14, 1993, a judgment was entered in the matter of United States v. Rafael Calabria, in the United States District Court, Western District of Missouri. The judgment was based upon Respondent's conviction, upon a plea of guilty, to eleven counts of unlawfully prescribing controlled substances in violation of Title 21 U.S.C. §842(a)(1)(1993). (Pet. Ex. #3).

3. During the period from on or about May 16, 1991 through September 3, 1991, Respondent wrote eleven prescriptions for controlled substances despite the fact that he did not have a valid Drug Enforcement Administration (hereinafter "DEA") registration. The prescriptions were written for several patients under Respondent's care. (Pet. Ex. #3; Resp. Ex. B).

4. Respondent was sentenced to serve a three year term of probation, to pay a fine of \$5,000.00 and an assessment of \$275.00, and to participate in any substance abuse treatment program deemed appropriate by the U.S. Probation Office. (Pet. Ex. 3).

5. Respondent testified that he wrote the controlled substance prescriptions for hospital patients during a period of severe depression and that they were not diverted for his personal use. Respondent admitted that he was aware that he did not have a valid DEA registration when he wrote the

prescriptions. (12-14).

6. Respondent submitted a letter from the Missouri Physicians' Health Program. The letter notes that Respondent was under the care of a psychiatrist for depression and that he was compliant with a prescribed anti-depressant medication. It was further noted that Respondent attends AA meetings on a regular basis and that all urine screens had been negative since Respondent joined the program. (Resp. Ex. A).

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 convicted, upon a plea of guilty, to multiple counts of unlawful prescription of controlled substances in violation of Federal law. This constitutes Respondent's conviction of a crime under Federal law and is professional misconduct pursuant to Education Law §6530(9)(a)(ii). As a result, the Hearing Committee voted to sustain the Specification of professional misconduct.

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 suspended for a period of five years. 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.

Although Respondent was convicted of prescribing controlled substances without a valid DEA registration, it is undisputed that the medications were not diverted to Respondent's own use. There is also no evidence that the prescriptions were not medically indicated for the individual patients. The record further established that Respondent has a long-standing history of substance abuse, but that he is currently under psychiatric treatment and is compliant with the requirements of the Missouri Physicians' Health Program.

The Hearing Committee unanimously determined that a five-year suspension of Respondent's New York medical license was the appropriate sanction. Under the totality of the circumstances, the Committee believes that this sanction strikes the proper balance between the need to punish Respondent, protect the public, and allow Respondent a meaningful chance to rehabilitate himself.

ORDER

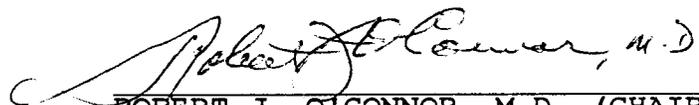
Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is SUSPENDED for a period of FIVE (5) YEARS.

DATED: Albany, New York

August 3, 1994


ROBERT J. O'CONNOR, M.D. (CHAIR)

JAY I. POMERANTZ, M.D.
LYNNE HENNECKE, Ph.D.

TO: Denise Lepicier, Esq.
Assistant Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Rafael A. Calabria, M.D.
Route 1, Box 428
Nevada, Missouri 64772

APPENDIX I

1

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: RAFAEL A. CALABRIA, M.D. : PROCEEDING
: :
-----X

TO: RAFAEL A. CALABRIA, M.D.
Route 1, Box 428
Nevada, Mo. 64772

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 15th day of June, 1994 at 10:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, 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 June 3, 1994 .

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 3, 1994 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 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: New York, New York

July 6, 1994



Chris Stern Hyman
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Denise Lepicier
Assistant Counsel
(212) 613-2617

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

-----X
IN THE MATTER : STATEMENT
OF : OF
RAFAEL A. CALABRIA, M.D. : CHARGES
-----X

RAFAEL A. CALABRIA, M.D., the Respondent, was authorized to practice medicine in New York State on March 16, 1971 by the issuance of license number 108093 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in this State.

FACTUAL ALLEGATIONS

- A. On or about April 14, 1993, a judgment was entered in the matter of United States v. Rafael Calabria, in the United States District Court, Western District of Missouri. By this judgment, Respondent's plea of guilt to eleven counts, in violation of federal law, Title 21 U.S.C. Section 842(a)(1)(1993) [unlawfully prescribing controlled substances], was entered. Respondent was sentenced to serve three years probation, with certain standard conditions, to pay a fine of five thousand dollars and an assessment of two

hundred seventy-five dollars, and, as a special condition of probation, to participate in any substance abuse treatment program deemed appropriate by the U.S. Probation Office.

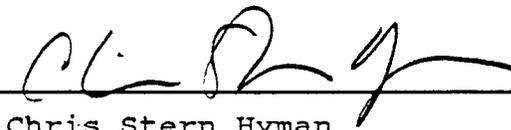
SPECIFICATION

CONVICTION OF CRIMINAL ACTIVITY

Respondent is charged with professional misconduct, within the meaning of N.Y. Education Law Section 6530 (9)(a)(ii) (McKinney Supp. 1994), by reason of having been convicted of acts constituting crimes under federal law, in that Petitioner charges the facts in paragraph A.

DATED: New York, New York

April 6, 1994



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct