



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

November 25, 1998

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Terrence Sheehan, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, NY 10001

Abenamar Arrillaga, M.D.
1195A Liberty Avenue
Hillside, NJ 07205

RE: In the Matter of Abenamar Arrillaga, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-202) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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.

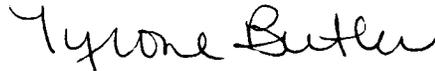
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in cursive script that reads "Tyrone Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

COPY

In The Matter Of

Abenamar Arrillaga, M.D. (Respondent)

**Administrative Review
Board (ARB)
Determination and
Dismissal Order 98-202**

**Proceeding to review a Determination by a Hearing Committee (Committee)
from the Board for Professional Medical Conduct (BPMC)**

**Before Board Members : Briber, Grossman, Lynch, Price & Shapiro.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

After conducting a hearing pursuant to N.Y. Pub. Health Law § 230(10)(McKinney's Supp. 1998), a BPMC Committee sustained charges that the Respondent violated N. Y. Educ. Law §6530(9)(a)(ii) (McKinney Supp. 1998) by committing conduct that resulted in his imprisonment and conviction for Medicare fraud conspiracy (one count) and making false statements to the Medicare Program (forty-four counts). The Respondent failed to appear at that hearing or to submit mitigating evidence for the Committee's consideration. The Committee voted to revoke the Respondent's License to practice medicine in New York State and to impose a Ten Thousand Dollar (\$10,000.00) fine. The Respondent then filed a Notice requesting that the ARB review the Committee Determination under N.Y. Pub. Health Law § 230-c (McKinney's Supp. 1998). That statute provides that the party requesting the review must perfect their review notice by submitting a brief to the ARB thirty days after filing the Review Notice. The ARB holds that the Respondent has failed to file a timely brief in this proceeding and we dismiss the Respondent's Notice.

The ARB received the Respondent's Notice on September 28, 1998, meaning that the Respondent had to submit a brief by October 28, 1998 to perfect his Notice. The Respondent failed to file a brief by October 28, 1998, has filed no brief since and has received no extension in filing from the ARB.

The Respondent's Review Notice did state 1.) that he has filed a now pending appeal against his criminal conviction, that the Respondent believes will be successful, and 2.) that his incarceration prevented him from appearing at the hearing below. We find no reason to reverse the Committee's Determination on either ground. New York Courts have sustained disciplinary actions against professional licensees, arising from criminal convictions, even with the underlying criminal conviction pending appeal, Matter of John Mitchell 40 N.Y.2d 153 (1976), and have ruled that hearings may proceed against a Respondent in the Respondent's absence, as long as the Repondent

received notice about the hearing and an opportunity to be heard, Matter of Sokol v. New York State Dept. of Health, 223 AD2d 774, 636 NYS2d 167 (Third Dept. 1996). The Respondent had the opportunity to present mitigating evidence in writing to both the Committee and the Review Board and he has failed to present such information. Without such mitigating evidence, the record reveals only a Respondent who has used his medical License to commit fraud and to enrich himself from funds that society set aside to provide medical care to the elderly. We hold that the Committee imposed an appropriate sanction for such misconduct by revoking the Respondent's License and fining him.

The ARB votes unanimously, therefore, to dismiss the Respondent's Review Notice and to sustain the Committee's Determination.

ORDER

NOW, based upon this Determination, the Review Board renders the following **ORDER**:

1. The ARB **SUSTAINS** the Committee's Determination.
2. The ARB **DISMISSES** the Respondent's Review Notice.

Robert M. Briber

Sumner Shapiro

Winston S. Price, M.D.

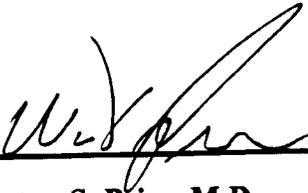
Stanley L. Grossman, M.D.

Therese G. Lynch, M.D.

In The Matter Of Abenamar Arrillaga, M.D.

Winston S. Price, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Arrillaga.

Dated: 11/24/, 1998



Winston S. Price, M.D.

In The Matter Of Abenamar Arrillaga, M.D.

Robert M. Briber, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Arrillaga.

Dated : November 23 , 1998

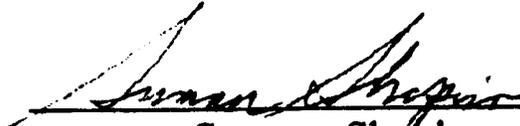
A handwritten signature in black ink, appearing to read "Robert M. Briber", written in a cursive style. The signature is positioned above a solid horizontal line.

Robert M. Briber

In The Matter Of Abenamar Arrillaga, M.D.

Sumner Shapiro, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Arrillaga.

DATED: November 17, 1998



Sumner Shapiro

In The Matter Of Abenamar Arrillaga, M.D.

Therese G. Lynch, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Arrillaga.

Dated : Nov. 16, 1998

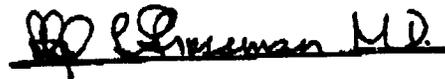
Therese G. Lynch M.D.

Therese G. Lynch, M.D.

In The Matter Of Abenamar Arrillaga, M.D.

Stanley L. Grossman, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Arrillaga.

Dated : 11/16, 1998



Stanley L. Grossman, M.D.