

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

August 8, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Absyom Kwabena Nyamekye, M.D.
P. O. Box 360
New York, New York 10030

Michael W. Warren, Esq.
Attorneys at Law
580 Washington Avenue
Brooklyn, New York 11238

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Hedley Park Place
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Absyom Kwabena Nyamekye, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-146) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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.

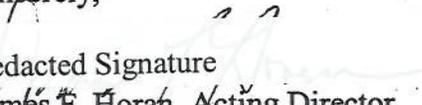
The notice of review served on the Administrative Review Board should be forwarded to:

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,


Redacted Signature
James F. Horan, Acting Director
Bureau of Adjudication

JFH:djh

Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC NO. 08-146

IN THE MATTER

OF

ABSYLOM KWABENA NYAMEKYE, M.D.

A hearing was held on July 17, 2008, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated April 9, 2007, were served upon the Respondent, **Absyлом Kwabena Nyamekye, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Mohammad-Reza Ghazi-Moghaddam, M.D.**, Chairperson, **Raman Kaul, M.D.**, and **Richard H. Edmonds, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared with counsel, **Michael W. Warren, Esq.**, of Brooklyn, New York.

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF THE CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(ii) by having been found guilty of committing crimes under federal law, specifically, Conspiracy to Distribute Controlled Substances and Money Laundering.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

This case was heard conjointly with the case of the Respondent's wife, Apryl Mamzette McNeil, M.D., Docket # CO-06-04-2585-A. The parties all agreed that the evidence and testimony should apply to both cases as if they were heard independently. Both Respondents were apprised of their right to have separate cases but they, with their attorney concurring, indicated, on the record, that they wished these cases to be heard together. It was agreed that the testimony and evidence should redound to the benefit, or detriment, of both cases.

WITNESSES

For the Petitioner:

None

For the Respondent:

Absylom Kwabena Nyamekye, M.D

April Mamzette McNeil, M.D.,

Respondent's wife

Silva Umukoro, President, Citicare,

Family Health Services

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to transcript page numbers or exhibits, denoted by the prefixes "T." or "Ex." These citations refer to 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. All Hearing Committee findings were unanimous.

1. **Absylom Kwabena Nyamekye, M.D.**, the Respondent, was authorized to practice medicine in New York State on September 18, 1997, by the issuance of license number 208330 by the New York State Education Department (Petitioner's Ex. 4).

2. The Respondent was charged in an Information dated July 18, 2005, in the United States District Court for the Northern District of Iowa with one count of Conspiracy to Distribute Schedule III and Schedule IV Controlled Substances under 21 U.S.C. §§ 841 (a)(1), 841(b)(1)(D), & 846 and with two counts of Conspiracy to Launder Money under 18 U.S.C. §§ 1956 (a)(1)(A)(i) & 1956 (h). (Petitioner's Ex. 5.)

3. The above charges were brought before Linda R. Reade, United States District Court Judge for the Northern District of Iowa on April 28, 2006 and the Respondent pled guilty to the aforementioned charges and was sentenced to Federal Prison for 20 months and obliged to pay an assessment of \$200 and suffer a forfeiture of \$36,286. (Petitioner's Exhibit # 5.)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(ii) by having been found guilty, after a plea of guilty, of committing crimes under federal law, specifically, Conspiracy to Distribute Controlled Substances and Money Laundering Substances under 21 U.S.C. §§ 841 (a)(1), 841(b)(1)(D), & 846 and 18 U.S.C. §§ 1956 (a)(1)(A)(i) & 1956 (h).

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent and his wife prescribed controlled substances for patients on the Internet, without meeting with them personally in the years 2003 and 2004. It appears that the Respondent pled guilty to a crime involving the distribution of well over 40,000 dosage units of Schedule III controlled substances. For this crime he was sentenced to 20 months in Federal prison. (Exhibit A)

The record in this case shows that the Respondent was authorized to practice medicine in New York State on September 18, 1997, by the issuance of license number 208330 by the New York State Education Department. At the hearing, the Petitioner presented thorough documentation establishing that the Respondent was charged in an Information dated July 18, 2005, in the United States District Court for the Northern District of Iowa with one count of Conspiracy to Distribute Schedule III and Schedule IV Controlled Substances under 21 U.S.C. §§ 841 (a)(1), 841(b)(1)(D), & 846 and with two counts of Conspiracy to Launder Money under 18 U.S.C. §§ 1956 (a)(1)(A)(i) & 1956 (h).

There was no dispute about these charges and the documents from the Federal Court in Iowa, Petitioner's Ex. 5, were received into evidence and made a part of the

record herein without objection from the Respondent or his attorney. The documents in the record go on to establish that the above charges were brought before the Honorable Linda R. Reade, United States District Court Judge for the Northern District of Iowa on April 28, 2006 and the Respondent pled guilty to the aforementioned charges and was sentenced to Federal Prison for a term of 20 months and obliged to pay an assessment of \$200 and suffer a forfeiture of \$36,286.

The Respondent testified on his own behalf and did not deny the fact that he pled guilty to the above crimes and he candidly acknowledged that he was guilty as charged. (T. 55). He indicated that he has served his sentence and that he was sorry for what he had done; acknowledging that he what he did was wrong. (T. 55)

To mitigate the New York penalty for his actions the Respondent gave background testimony about his life and work. Specifically, the Respondent testified about his childhood and his motivations for becoming a Doctor, indicating that, as a child, he was unable to get treatment for an injury due to lack of insurance. (T. 45) This childhood experience led him to medical school and then residency in New York where he began, in earnest, to help disadvantaged minorities get medical services. (T. 47) He then worked for a clinic in Brooklyn, Kamau Kokayi, and provided alternative treatments for those suffering from Hepatitis C. (T. 47). Thereafter, he went on to work for a family clinic in the Bronx (T. 48) but money was still tight and he and his wife were in considerable debt. To meet expenses he worked several jobs and worked nights at North General Hospital, covering the floors (T. 48).

He indicated that he then started working for Citicare in Harlem and that he still has a relationship with them. This testimony was corroborated by the President of this program, Silva Umukoro, who testified with high praise for the Respondent and his wife pointing out the great value of their work for the people of Harlem. (T. 86 *et seq.*) The

panel was impressed with the significant work the Respondent was doing in Harlem and with the fact that he went far and wide looking for positions and worked in places as disparate as the Ute Mountain Indian Reservation and for the soldiers at Fort Drum in upstate New York. (T. 49). After the attacks on September 11, 2001, the Respondent worked for Downtown Medical providing care for the first responders. (T. 50). It appears that he was doing good work at this time, but, for one reason or another, Downtown Medical was not getting reimbursed in a timely fashion and the Respondent went without income for this work. The value of Respondent's work at this time is set forth in Exhibit C, a letter from Dr. David Root of Sacramento California. This letter attests to the fact that the Respondent aided World Trade Center responders in detoxification treatments after the disaster. Similarly, Exhibit D is a letter Doctor Lisa Clark of Bellmore, NY, outlining the compassion and concern of the Respondent and how invaluable he and his wife are to the medical profession in New York.

As for an explanation for the crime, the testimony at the hearing went on to show that, due to their difficult financial situation, the Respondent and his Wife looked to the Internet for alternative sources of income and that they were attracted to an advertisement for physicians to work for a pharmacy to facilitate on-line prescription. The Attorneys for both sides stipulated that the written testimony of the Assistant U.S. Attorney (AUSA) in the case, Stephanie Rose, Exhibit 6 in the record, should be admitted to explain the Department of Justice position on this matter, and this stipulation was received without objection. The stipulated testimony of AUSA Rose shows that the Respondent and his wife were part of a larger number of physicians who were recruited by an Internet pharmacy company to prescribe controlled substances. AUSA Rose pointed out that the Respondent and his wife were assured by this pharmacy that what they were doing was legal, and while this does not excuse their conduct, AUSA Rose

asked that it not be overlooked. Respondent's attorney amplified the statement of AUSA Rose, with a full transcript of the sentencing hearing from federal court. (See Exhibit A)

Most significantly, AUSA Rose stated that Respondent and his wife were immediately cooperative with federal authorities and assisted with investigations in several United States Attorney Offices around the United States. For example, Exhibit A contains a letter from the U.S. Attorney in South Carolina detailing the cooperation of the Respondent with Federal authorities in that jurisdiction.

Exhibit E in the record is a strong letter of support from Doctor Alerte of New York City, dated July 1, 2008. This letter points out that the Respondent understands how poverty, chronic stress, substance abuse, and single parent families affect the mental and physical health of any patient population and, as a result, the Respondent is a particularly valuable community asset. Exhibit F is a letter from Doctor Darku of New York City which also supports the Respondent indicating his great facility in all aspects of adult and pediatric care as well as his use of medical acupuncture.

In assessing the penalty to be imposed in this case, the panel took many factors into account, not the least of which was, as stated by AUSA Rose, the Respondent's long history of caring for the impoverished, the elderly, the mentally ill, and others who are often viewed as less desirable patients. (Exhibit 6). The panel took into account the seriousness of the crimes that were committed but also found that the Respondent had paid for his crime, was remorseful, and was now ready to resume his role in society. The panel did not underestimate the positive impact of the Respondent's work in needy communities and thus decided not to revoke his license. The panel was satisfied that the people of New York would be protected with a stayed suspension and a two-year probation. The panel was unanimous in its determination as to penalty.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is hereby **SUSPENDED FOR A PERIOD OF ONE YEAR; HOWEVER, THE SUSPENSION IS STAYED IN WHOLE.**
3. Respondent is placed on probation for two years. The probation is stayed until Respondent returns to active practice of medicine in New York State. The terms of probation are attached hereto.
4. During the first year of Respondent's return to the active practice of medicine in New York State, Respondent shall complete 20 hours of Category I Continuing Medical Education.
5. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Amsterdam, New York
Aug 5TH, 2008

Redacted Signature

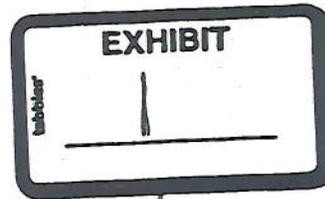
Mohammad-Reza Ghazi-Moghaddam, M.D.,
Chairperson,

Raman Kaul, M.D.,
Richard H. Edmonds, Ph.D.,

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices,
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

APPENDIX 1



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

IN THE MATTER
OF
ABSYLOM KWABENA NYAMEKYE, M.D.
CO-06-04-2584-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: ABSYLOM KWABENA NYAMEKYE, M.D.
Inmate No. 09574-029
Metropolitan Detention Center
80 29th Street
P.O. Box 329002
Brooklyn, NY 11232

The undersigned, Richard F. Daines, M.D., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that **ABSYLOM KWABENA NYAMEKYE, M.D.**, Respondent, licensed to practice medicine in the State of New York on September 18, 1997, by license number 208330, has been convicted of committing an act constituting a felony under federal law, as is more fully set forth in the Statement of Charges attached, hereto, and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), effective immediately **ABSYLOM KWABENA NYAMEKYE, M.D.**, Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law §230(12).

Any practice of medicine in the State of New York in defiance of this Commissioner's Order shall constitute Professional Misconduct within the meaning of N.Y. Education Law §6530(29) and may constitute unauthorized medical practice, a felony, defined by N.Y. Education Law §6512.

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 20th day of June, 2007, at 10:00 a.m., at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to the State Administrative Procedure Act §301(5), 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 hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

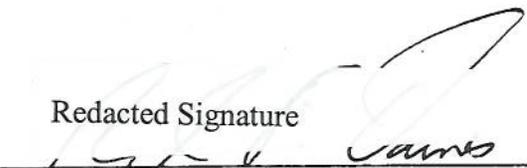
At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

April 7, 2007

Redacted Signature



RICHARD F. DAINES, M.D.
Commissioner of Health

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

ABSYLOM KWABENA NYAMEKYE, M.D.
CO-06-04-2584-A

STATEMENT

OF

CHARGES

ABSYLOM KWABENA NYAMEKYE, M.D., Respondent, was authorized to practice medicine in New York state on September 18, 1997, by the issuance of license number 208330 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 21, 2006, in the United States District Court, Northern District of Iowa, Respondent was found guilty, based on a plea of guilty, of one (1) count Conspiracy to Distribute Schedule III and IV Controlled Substances, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), and 846 and one (1) count of Conspiracy to Launder Money, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i) and 1956(h), felonies, and was sentenced to twenty (20) months imprisonment, two (2) years supervised release upon release from imprisonment, a \$200.00 special assessment, and a \$36,286.00 forfeiture.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *April 9*, 2007
Albany, New York

Redacted Signature



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