



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

Public

July 30, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

Anthony Z. Scher, Esq.
Wood & Scher
222 Bloomingdale Road – Suite 311
White Plains, New York 10605

Nancy Joachim, M.D.
262 Central Park West #1D
New York, New York 10025

RE: In the Matter of Nancy Joachim, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-135) 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 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), (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 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,
REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
:
OF : AND
:
NANCY JOACHIM, M.D. : ORDER
-----X

BPMC #10-135
COPY

A Notice of Hearing and Statement of Charges, both dated November 24, 2009, were served upon NANCY JOACHIM, M.D., Respondent. GREGORY FRIED, M.D., Chairperson, DEBORAH B. MARIN, M.D., and CONSTANCE DIAMOND, D.A., 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. WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health ("the Department") appeared by THOMAS CONWAY, General Counsel, by DIANNE ABELOFF, ESQ., of Counsel. The Respondent appeared by WOOD & SCHER, ANTHONY Z. SCHER, ESQ., of Counsel. Evidence was received, 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.

PROCEDURAL HISTORY

Date of Service: November 24, 2009

Answer Filed: November 30, 2009

Pre-Hearing Conference: December 1, 2009

Hearing Dates: January 13, 2010
April 9, 16 and 29, 2010
May 20, 2010

Witnesses for Petitioner: Clarice Kestenbaum, M.D.
Arnold Merriam, M.D.
Adriana Notarfrancesco, M.D.
Douglas Dieterich, M.D.

Witnesses for Respondent: Nancy Joachim, M.D.
Anna Shearer
Patient "G.C."
Patient "J.S."
Patient "M.H."
Patient "S.D."
Elizabeth Call
David Elgard

Receipt of Submissions: June 14, 2010

Deliberation Held: June 24, 2010

STATEMENT OF CASE

The State Board for Professional Misconduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq of the Public Health Law of the State of New York [hereinafter "P.H.L."]).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter

"Petitioner" or "Department") pursuant to §230 of the P.H.L. Nancy Joachim, M.D. ("Respondent") is charged with one specification of professional misconduct, as defined in §6530 of the Education Law of the State of New York ("Education Law"). Specifically, Respondent is charged with having a psychiatric condition which impairs her ability to practice medicine. A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Having heard testimony and considered documentary evidence presented by the Petitioner and Respondent, the Hearing Committee hereby makes the following findings of fact:

1. Nancy Joachim, M.D., Respondent, was authorized to practice medicine in New York State on May 2, 1989 by the issuance of license number 178125 (Dept Ex. 1).

2. Prior to the Fall of 2008, Respondent was a well-respected psychiatrist (T. 37, 87, 181).

3. Respondent testified that she began to experience "cosmic consciousness" in the Summer of 2008, that God started speaking to her, and that she had a "mini satori" which she described as an experience of enlightenment (T. 454).

4. When Respondent told a colleague, Clarice Kestenbaum, M.D., that she heard God talking to her and that she heard beautiful music in the Fall of 2008, Dr. Kestenbaum told Respondent to see a neuropsychiatrist (T. 32-33).

5. Respondent mistakenly thought that Dr. Kestenbaum had reported the hallucinations to the Administration at Columbia (T. 299). Subsequently, Respondent telephoned Dr. Kestenbaum on several occasions accusing Dr. Kestenbaum of ruining her life and threatening to ruin Dr. Kestenbaum's reputation. (T. 35, 38-40).

6. Respondent accused many people of conspiring against her. When a colleague, Adriana Notarfrancesco, M.D., told Respondent that she was behaving suspiciously, Respondent called Dr. Notarfrancesco a derogatory name. Dr. Notarfrancesco hung up the phone and did not carry on any further telephone conversations with the Respondent (T. 216-217, 235).

7. Respondent left several harassing voice messages about who was plotting against her on Dr. Notarfrancesco's answering machine

(T. 235-235, Dept Ex. 6).

8. Respondent sent an e-mail to the faculty at Columbia accusing Dr. Kestenbaum and Dr. Notrfrancesco of incompetence and ethical violations (Dept Ex. 5).

9. Respondent refused to report an instance of a hyper-sexual child as suspected child-abuse in part because God had told her to take personal responsibility, doing the right thing no matter what. As a result, Respondent's superiors at Columbia University Hospital removed her from the case and terminated her supervision of the assigned medical resident. Respondent contended the mother was an excellent parent and that there was insufficient evidence to indicate that the child had been sexually abused (T. 465-467, Dept Ex. 3).

10. Respondent became very sick after the conflict that occurred with one of her superior at Columbia. She developed severe diarrhea and abdominal pain that persisted (T. 468).

11. Respondent lost her affiliation with Columbia University hospital because she failed to take a mandated on-line training course on fire, safety, and infection control (T. 470-472).

12. Respondent told David Kahn, M.D., the head of the Department of Psychiatry at Columbia, that she thought that she had a parasite because she saw worms in the toilet in spite of the fact that a stool ova and parasites test performed was negative. Respondent testified that Dr. Kahn told her that she had a delusion

of parasitosis and that she should go to the hospital's occupational health unit for an evaluation (T. 471-472, 299; Dept Ex. 3).

13. Respondent developed incontinence and lost 30 pounds (T. 301).

14. Respondent irrationally believed the reason Dr. Kahn acted against her was because Dr. Kahn is psychopharmacologically oriented and Respondent is not (T. 381).

15. Respondent made an appointment with occupational health, but cancelled it because she felt threatened that she would be declared incompetent (T. 476).

16. Respondent saw Otto Kernberg, M.D., a psychiatrist, on January 27, February 3 and February 23, 2009. Dr. Kernberg determined that Respondent's symptoms reflected a psychotic illness. His tentative diagnosis was paranoid schizophrenia, and he recommended a neurological evaluation to rule out an organic cause for hearing voices (T. 477, 481; Ex. 3).

17. At this point, Respondent stayed with her mother. Respondent was unable to take care of herself, cook or do laundry (T. 480).

18. Pursuant to an Order of the New York State Board for Professional Medical Conduct, Respondent was examined by Arnold E. Merriam, M.D. on May 26 and 28, 2009. Doctor Merriam determined that Respondent suffered from a psychiatric condition, and that she

responded to internal stimuli in a way that impaired her ability to practice medicine safely (T. 167, 303, 428-429).

19. Respondent's insight and judgment were impaired. Instead of considering the possibility that her behavior indicated a need for psychiatric consultation, Respondent retaliated against the individuals who suggested the need for psychiatric intervention (T. 313-314, 579).

20. Respondent believes she is having a non-psychotic hallucination when she hears the voice of God (T. 579-580).

21. Respondent does not believe she suffers from a psychiatric condition. She feels fortunate to experience her auditory hallucination of beautiful music and that it is not disrupting her life (T. 464).

22. Respondent treated Patient "W.H." for depression for many years and saw him once or twice over the last year or two prior to the Fall of 2008 (T. 507).

23. Patient "W.H" called Respondent in the Fall of 2008 to make an appointment because he had lost his job and was morbidly depressed (T. 507, 298).

24. At the treatment session, Respondent spoke to Patient "W.H." about her relationship with God and several other things for approximately two hours. Respondent's office was in disarray (T. 246).

25. Patient "W.H." was concerned that Respondent needed help, and he reported the incident to Dr. Douglas Dieterich to see if he could do something about it (T. 246-247).

26. During a treatment session with Patient "L.", Respondent told Patient "L." to stop speaking because she was hearing God's voice. Respondent then rearranged the furniture according to what she said was God's specifications. Respondent told Patient "L." about her own failed personal relationships and that she was losing many patients because she had been dancing during sessions (T. 186-187).

CONCLUSIONS OF LAW

Respondent is charged with one specification alleging professional misconduct within the meaning of Education Law §6530. The Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee first considered the credibility of the various witnesses, and thus the weight to be accorded their testimony.

The Department presented testimony by Arnold Merriam, M.D. Doctor Merriam is board certified in neurology and psychiatry. He is

currently the chairman of the Department of Psychiatry for Jacobi Medical Center and North Central Bronx Hospital, and he maintains a private practice. The Hearing Committee found that Dr. Merriam's testimony was credible.

The Department also offered the testimony of three other physicians who told the panel about their observations of Respondent and statements made to them by patients of the Respondent. The Respondent's previously positive relationships with Dr. Kestenbaum and Dr. Notarfrancesco had ended, but her relationship with Dr. Dieterich remained intact. The Hearing Committee felt, in particular, that the testimony by Dr. Dieterich and Dr. Notarfrancesco relating to statements made by Respondent's patients was credible and consistent. There appeared to be no reason for these witnesses to fabricate testimony about conversations with Respondent's patients, and the conversations appeared to be the natural result of professional relationships which the witnesses had with the Respondent and the Respondent's patients.

Although the Committee did not have the opportunity to hear testimony directly from the Respondent's patients, the Committee felt that the hearsay statements conveyed to the Committee by Dr. Dieterich and Dr. Notarfrancesco were reliable. Further, the statements made by the patients were in large part consistent with the Respondent's testimony, even though Respondent attempted to

provide a justification for her actions during the treatment sessions.

Respondent testified herself and admitted that she decided to change the way she practiced psychiatry because God had told her that he was unhappy with the rigidity of modern medicine. As a result, she intended to be warmer with her patients and tell them things about herself. Respondent admitted that she moved a cabinet in the midst of a patient's treatment session, contending she did so to create a warmer environment. At times, her testimony rambled onto insignificant tangential matters, and she appeared unable to respond directly to some of the questions that were posed to her. She denied having a psychiatric impairment, and she was unable to acknowledge that her colleagues may have been acting in her interest.

Respondent offered the testimony of five other witnesses. Anna Shearer, an attorney testified that she had not observed Respondent to have had any irrational thoughts or impaired judgment. Four former patients who discontinued treatment, but maintained contact with Respondent, testified that Respondent continues to think rationally and demonstrate unimpaired judgment. Elizabeth Call, a licensed acupuncturist also testified that Respondent has not shown any significant change in her mental thought processes or rational thinking. Finally, David Elgart, a teacher, testified that Respondent continues to be rational and that she has not exhibited

any impaired judgment. The Hearing Committee felt that each of these witnesses testified honestly; however, their testimony which showed infrequent and limited contacts with the Respondent since the Fall of 2008 provided little evidence of Respondent's psychiatric condition and whether it impaired her ability to practice medicine.

Based upon the testimony and documents in the record, the Hearing Committee concludes that the Department established by a preponderance of the evidence that Respondent has a psychiatric condition which impairs her ability to practice medicine. Respondent's medical record from Dr. Otto Kernberg in February 2009 indicates a tentative diagnosis of paranoid schizophrenia and a mental status examination finding of "religious and hypochondriacal delusions, relatively systemized auditory hallucinations, anxious and distrustful mood, lack of reality testing." Dr. Arnold Merriam credibly testified that Respondent was psychotic for a period of time based upon his psychiatric evaluation and neurological evaluation in May 2009. Respondent did not call a medical expert to testify on her behalf, and her own testimony at the hearing demonstrates that she continues to have no insight into the fact that she had been psychotic or that she now requires psychiatric treatment.

The Hearing Committee considered and rejected Respondent's contention that the charges should be dismissed because an opinion as to a definitive diagnosis of Respondent's psychiatric condition was

not offered into evidence. Although the exact nature of that psychiatric condition has not yet been determined, testimony by the Department's medical expert establishes that the Respondent was psychotic and that she continues to suffer from a psychiatric condition that impairs her ability to safely practice medicine.

The Hearing Committee also considered and rejected Respondent's contention that the case brought against her represents psychiatry's rejection of religion. A significant portion of the testimony in this case did relate to the Respondent's statements about her religious experiences; however, the expert testimony reasonably pointed to statements and behaviors by the Respondent apart from her stated religious experiences that formed the basis for the expert's opinion. In keeping with that expert opinion, the Hearing Committee concluded that the Respondent was psychotic and cannot safely practice medicine while she lacks insight into her psychiatric condition.

The First Specification charged Respondent with committing misconduct as defined by New York Education Law §6530(8). As discussed in detail above, the Hearing Committee determined that the Respondent has a psychiatric condition which impairs her ability to practice medicine. As a result, the First Specification is Sustained.

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 until Respondent successfully completes a course of psychiatric treatment under the care of a board-certified psychiatrist proposed by Respondent and approved, in writing, by the Director of the Office of Professional Medical Conduct. The approved treating psychiatrist must review the record of this hearing including the testimony and the exhibits received into evidence. In order to protect the public, the suspension must continue indefinitely until the psychiatrist reports in writing to the Director of the Office for Professional Medical Conduct that the Respondent has complied with the treatment recommendations and that the Respondent's ability to practice medicine is no longer impaired. 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.

ORDER

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

1. The First Specification of professional misconduct, as set forth in the Statement of Charges is SUSTAINED;
2. Respondent's license to practice medicine as a

physician in New York State is hereby SUSPENDED WHOLLY, UNTIL THE RESPONDENT SUCCESSFULLY COMPLETES A COURSE OF PSYCHIATRIC TREATMENT by a board-certified psychiatrist proposed by the Respondent and approved, in writing, by the Office of Professional Medical Conduct;

3. The suspension of Respondent's license shall be terminated upon receipt by the Board for Professional Medical Conduct of a report from the approved psychiatrist indicating that the psychiatrist has reviewed the record of this hearing; that the Respondent has complied with the treatment recommendations and that the psychiatrist is of the opinion that the Respondent's ability to practice medicine is no longer impaired;

4. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: New York, New York

July 30, 2010

REDACTED

GREGORY FRIED, M.D. (CHAIR)

DEBORAH B. MARIN, M.D.
CONSTANCE DIAMOND, D.A.

TO: Dianne Abeloff, Esq.
Associate Counsel
New York State Department of Health
90 Church Street -4th Floor
New York, New York 10007

Anthony Z. Scher, Esq.
Wood & Scher
222 Bloomingdale Road - Suite 311
White Plains, New York 10605

Nancy Joachim, M.D.
262 Central Park West #1D
New York, New York 10025

APPENDIX I

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

IN THE MATTER
OF
NANCY JOACHIM, M.D.

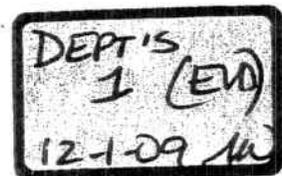
NOTICE
OF
HEARING

TO: NANCY JOACHIM, M.D.
262 Central Park West #1D
New York, New York 10025

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. 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 January 13, 2010, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th floor, N.Y., N.Y. 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.



YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here DA

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be

photocopied.

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 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 OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
November 24, 2009

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Dianne Abeloff
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street
New York, New York 1007
212-417-4431

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

IN THE MATTER
OF
NANCY JOACHIM, M.D.

STATEMENT
OF
CHARGES

NANCY JOACHIM, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 2, 1989, by the issuance of license number 178125 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From in or about November 2008 and continuing through the present, Respondent had and continues to have a psychiatric condition which impairs her ability to practice medicine.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

**HAVING A
PSYCHIATRIC CONDITION WHICH IMPAIRS
THE ABILITY TO PRACTICE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(8) by having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

1. Paragraph A.

DATE: November 24, 2009
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct