



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 4, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Valerie B. Donovan, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2509
Albany, New York 12237

PUBLIC

Joseph Atanasio, M.D.
18 Lewis Drive
Maplewood, New Jersey 07040

RE: In the Matter of Joseph Atanasio, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-199) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

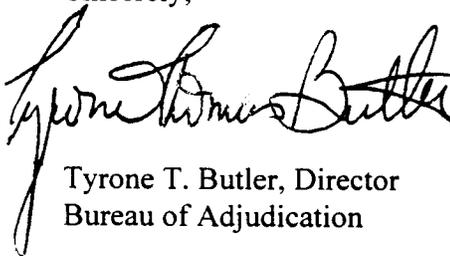
The notice of review served on the Administrative Review Board should be forwarded to:

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, appearing to read "Tyrone T. Butler", written in a cursive style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

IN THE MATTER
-OF-
JOSEPH ATANASIO, M.D.
Respondent

DETERMINATION
AND
ORDER

ORDER #99-199

A Notice of Hearing and Statement of Charges, dated April 29, 1999, were served upon the Respondent, Joseph Atanasio, M.D. **DAVID LYON, M.D. (Chair), MOHAMMAD GHAZI-MOGHADAM, M.D. and REV. EDWARD HAYES** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the 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 Henry M. Greenberg, Esq., General Counsel, Valerie B. Donovan, Esq., Assistant Counsel. The Respondent appeared pro se. Evidence was received, statements were heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law § 230(10). In this instance the charges alleged the Respondent violated the terms of his New York State Temporary Surrender of License and Registration. Additionally, the Respondent was charged with medical misconduct under Education Law § 6530(9)(d) under which a licensee is charged with misconduct based upon prior professional disciplinary action in another jurisdiction where the underlying conduct would, if committed in New York, amount to misconduct. The § 6530(9)(d) charges herein arise from the New Jersey Board of Medical Examiners (hereinafter the New Jersey Board) issuing an Order which reprimanded the Respondent based on a finding that he had engaged in the unlicensed practice of medicine. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to and made a part of 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 Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Joseph Atanasio, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on or about March 19, 1976, by the issuance of license number 126810 by the New York State Education Department. (Pet. Ex. 3)

2. On or about August 14, 1996, the Respondent entered into an Interim Consent Order of Surrender with the New Jersey Board which permitted the Respondent to surrender his license to practice medicine and surgery in New Jersey and under the terms of which he could not practice until his license was restored. The surrender was based on the Respondent being an alcohol and controlled substance abuser. (Pet. Ex. 4)

3. On or about February 12, 1997, the Respondent entered into a Temporary Surrender of License and Registration with the New York State Board for Professional Medical Conduct (hereinafter the New York Board) which permitted the Respondent to surrender his New York license and registration. The Surrender was based on Respondent's impairment to practice due to alcohol and substance abuse. (Pet. Ex. 5)

4. The February 12, 1997, Surrender with the New York Board contained requirements that the Respondent surrender his license document and registration certificate, that he not practice medicine in New York or any other state until his license was restored, that he submit annual statements to the Director of the New York Board certifying that he has not practiced medicine in any jurisdiction and that he submit executed waivers of patient confidentiality regarding his treatment to the New York Board. The Respondent did not meet these requirements. (T. 21; Pet. Exs. 4, 5, 6, 8 and 10)

5. On or about April 9, 1998, the New Jersey Board issued a Consent Order Reinstating Restricted Licensure which reinstated the Respondent's New Jersey license and reprimanded him for engaging in the unlicensed practice of medicine in violation of the August 14, 1996, Consent Order of Surrender entered into with the New Jersey Board. (Pet. Ex. 4)

CONCLUSIONS

The following conclusions were made pursuant to the Findings of Fact listed above. The Committee concluded that the following Factual Allegations were proven by a preponderance of the evidence (the paragraphs noted refer to those set forth in the Statement of Charges, Factual Allegations). An asterisk notes the determination was not unanimous. The citations in parentheses refer to the Findings of Fact (supra), which support each Factual Allegation:

Paragraph A.: (2);

Paragraph B.: (3,4) except for that part of the allegation which alleges the Surrender was entered into on November 12, 1997 in lieu of February 12, 1997;

Paragraph B.1.: (4) except for that part of the allegation which alleges the Surrender was entered into on November 12, 1997 in lieu of February 12, 1997;

Paragraph B.2.: (4,5) except for that part of the allegation which alleges the Surrender was entered into on November 12, 1997 in lieu of February 12, 1997;

Paragraph B.3.: (4) except for that part of the allegation which alleges the Surrender was entered into on November 12, 1997 in lieu of February 12, 1997;

Paragraph B.4.: (4) except for that part of the allegation which alleges the Surrender was entered into on November 12, 1997 in lieu of February 12, 1997;

Paragraph C.: (5);

Paragraph D.: (2, 5) except for that part of the allegation which alleges the Respondent was disciplined in New Jersey for practicing the profession while impaired. *

The Committee further concluded that the following Specifications should **be sustained**. The citations in parentheses refer to the Factual Allegations from the Statement of Charges, which support each specification:

VIOLATION OF A CONDITION OR LICENSE LIMITATION

First through Fourth Specifications: (Paragraphs B., B.1., B.2., B.3. and B.4.);

HAVING BEEN FOUND GUILTY OF MISCONDUCT BY ANOTHER STATE

Fifth Specification: (Paragraphs A., C. and D.);

HAVING HAD DISCIPLINARY ACTION TAKEN BY ANOTHER STATE

Sixth Specification: (Paragraphs A., C. and D.).

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 Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was found guilty of misconduct by another state and had disciplinary action taken against his license by another state. The underlying conduct which was the basis for the action by the New

Jersey Board would constitute professional misconduct in New York. Specifically, the Committee found the Respondent's actions would fall within the definitions of misconduct set forth at Education Law § 6530(7) (Practicing the profession while impaired) and § 6530(12) (Practicing while the license is suspended).

The Committee also found that the Respondent has not complied with the conditions placed upon his license by the New York Board. They found his arguments for failing to comply with the terms of the Temporary Surrender amounted to excuses which were not persuasive. The Committee did not find credible the Respondent's statement that he had not read the Surrender. No reasonable explanation for noncompliance was presented. It is the Respondent's responsibility to abide by the document that he signed. Although the Committee is sensitive to the circumstances of impaired physicians, the impairment does not obviate compliance with the terms of a disciplinary settlement agreed to by the Respondent with the New York Board.

DETERMINATION AS TO PENALTY

The 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 **indefinitely suspended until such time as his license in New York is restored**. 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 Committee views the Respondent's conduct with respect to his noncompliance with the terms of his Temporary Surrender as a quite serious breach and represents his lack of willingness to accept the authority of the New York Board.

The Committee has a duty to protect the public in New York. The Committee felt that suspending the Respondent's license indefinitely until he satisfies the requirements of a restoration committee, including but not limited to those set forth in Appendix II, would adequately do so.

ORDER

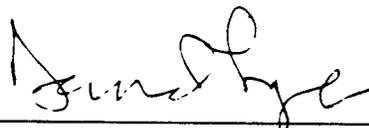
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First through Sixth 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 **SUSPENDED INDEFINITELY** under the terms set forth in Appendix II, attached to this

Order and made a part thereof.

SCHENECTADY
DATED: New York, New York
JULY 30, 1999



DAVID LYON, M.D. (Chair)
MOHAMMAD GHAZI-MOGHADAM, M.D
REV. EDWARD HAYES

TO: Valerie B. Donovan, Esq.
Assistant Counsel
New York State Department of Health
ESP – Corning Tower
Room 2509
Albany, New York 12237-0032

Joseph Atanasio, M.D.
18 Lewis Dr.
Maplewood, NJ 07040

APPENDIX I

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

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IN THE MATTER : STATEMENT
OF : OF
JOSEPH ATANASIO, M.D. : CHARGES

-----X

JOSEPH ATANASIO, M.D., the Respondent, was authorized to practice medicine in New York State on March 19, 1976, by the issuance of license number 126810 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine. Respondent's current address is 18 Lewis Drive, Maplewood, New Jersey 07040.

FACTUAL ALLEGATIONS

- A. Respondent, on August 14, 1996, entered into an Interim Consent Order of Surrender in the Matter of the Surrender of the License of Joseph Atanasio, M.D with the New Jersey State Board of Medical Examiners, in which Respondent admitted to substance abuse and agreed to be bound by the terms and conditions therein.
- B. Respondent, on November 12, 1997, entered into a Temporary Surrender of License and Registration agreement with the New York State Board for Professional Medical Conduct (Board) wherein Respondent admitted that he was incapacitated for the active practice of medicine due to chemical dependency, and agreed to numerous terms and conditions set forth therein.
1. As of April, 1999, Respondent has not surrendered his license document

and registration certificate to the New York Board pursuant to paragraph five of the November 12, 1997, Temporary Surrender of License and Registration agreement.

2. Respondent practiced medicine in the state of New Jersey while his licensure status was inactive in New York, in violation of paragraph eight of the November 12, 1997, Temporary Surrender of License and Registration agreement with the New York Board.
 3. As of March, 1999, Respondent has failed to submit signed statements to the Director of the Office of Professional Medical Conduct, on an annual basis, certifying that he has not practiced medicine, in any location, at any time subsequent to this surrender of his license, in violation of paragraph seventeen of the November 12, 1997, Temporary Surrender of License and Registration agreement.
 4. As of March, 1999, Respondent has failed to submit to the Office of Professional Medical conduct the executed waivers of patient confidentiality to his treatment, in violation of paragraph eighteen of the November 12, 1997, Temporary Surrender of License and Registration agreement.
- C. Respondent, on April 9, 1998, entered into a Consent Order Reinstating Restricted Licensure with the New Jersey State Board of Medical Examiners, in which Respondent was reprimanded for engaging in the unlicensed practice of medicine during the period when his license had been surrendered.
- D. The conduct which Respondent admitted and/or was disciplined for by the New Jersey State Board of Medical Examiners in the April 9, 1998 Consent Order Reinstating Licensure would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law. § 6530(12), practicing the profession while the license is suspended or inactive, and N.Y. Educ. Law. § 6530(7), practicing the profession while impaired.

SPECIFICATIONS OF MISCONDUCT
FIRST THROUGH FOURTH SPECIFICATIONS
VIOLATION OF A CONDITION OR LICENSE LIMITATION

Respondent is charged with professional misconduct under New York Education Law § 6530(29) by reason of his having violated a condition and/or a license limitation imposed on his license pursuant to § 230 of the Public Health Law, in that Petitioner charges:

1. The facts in paragraphs B and/or B.1.
2. The facts in paragraphs B and/or B.2.
3. The facts in paragraphs B and/or B.3.
4. The facts in paragraphs B and/or B.4.

FIFTH SPECIFICATION
GUILTY OF MISCONDUCT IN ANOTHER STATE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(b) by reason of 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, in that Petitioner charges:

5. The facts in paragraphs A, C and/or D.

SIXTH SPECIFICATION
DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d) in that he had disciplinary action taken against him by a duly authorized professional disciplinary agency of another state, where the conduct

resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

6. The facts of paragraphs A, C and/or D.

DATED: *April 29*, 1999
Albany, New York


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

APPENDIX II

TERMS OF SUSPENSION AND RESTORATION

1. Unless and until the Respondent's license is restored his licensure status is "inactive" and he is not authorized to practice medicine in the State of New York or any other State. Any practice of medicine while his license is "inactive" shall constitute a violation of N. Y. Educ. Law Section 6530(12)(McKinney Supp. 1996), regardless of the location of such practice.

2. Unless and until his license is restored the Respondent shall notify all persons who request his medical services that he has temporarily withdrawn from the practice of medicine.

3. The Respondent's license shall be restored only upon a showing to the satisfaction of a committee of the State Board for Professional Medical Conduct (the Board) that he is no longer incapacitated for the active practice of medicine. The aforesaid showing shall include but not be limited to his having complied with the terms of the February 12, 1997, New York Temporary Surrender of License and Registration and all requirements imposed by the State of New Jersey.

4. Upon the Respondent's request, a meeting of a committee of the Board shall be convened for the purpose of my making the showing referred to in paragraph 3. The Board will make reasonable attempts to convene a committee not later than 90 days after my request has been fully made. The request will be considered to be fully made after receipt by the Director of the Office of Professional Medical Conduct (OPMC) of the documentation required by paragraph 5 below.

5. At the time that the request that a meeting of a committee of the Board be scheduled, pursuant to paragraph 4, the Respondent will provide the Director, Office of Professional Medical Conduct, New York State Department of Health, Hedley Park Place, 433 River St., 4th Floor, Troy, New York, 12180, with the following:

a. The signed acknowledgement from the sobriety monitor referred to in paragraph 7(b).

b. The signed acknowledgement from the supervising physician referred to in paragraph 7(c).

c. The signed acknowledgement from the health care professional or treatment program referred to in paragraph 7(d).

d. Certified complete copies of records of all evaluations and treatment, relating to Respondent's impairment, whether that evaluation or treatment occurred prior to or during the time this suspension is in effect. These records should include documentation of the results of all urine/blood/breath tests conducted to detect the presence of drugs/alcohol.

e. Fully executed waivers of patient confidentiality concerning any previous and

prospective treatment records.

f. A current in depth chemical dependency evaluation performed by a health care professional in a licensed facility. Also, upon request of the Director of OPMC, a psychiatric evaluation by a Board Certified psychiatrist.

g. The Respondent shall also attend, participate in, and cooperate with an interview conducted by the personnel of OPMC, upon request of the Director of OPMC.

Provision of the aforesaid documents does not constitute a showing that the Respondent is no longer incapacitated for the active practice of medicine.

6. At the proceeding referred to in paragraph 4, the Respondent shall provide the committee, at a minimum, with the following:

a. Certification of treatment in a residential rehabilitation or day-treatment program or intensive treatment in an out-patient service.

b. Evidence of compliance with the conditions of a continuing after-care out-patient treatment plan that addresses the major problems associated with his illness.

Submission of the aforesaid evidence does not constitute a showing that the Respondent is no longer incapacitated for the active practice of medicine.

7. If the Chairperson of the committee issues an order restoring his license (Order), the Order shall include a monitoring period of no less than two years. The minimum conditions will be the following:

a. The Respondent remains drug and alcohol free.

b. The Respondent's mental health, medication compliance and sobriety will be monitored by a health care professional who shall be named in the conditions contained in or annexed to the Order. Said monitor shall supervise his compliance with the conditions set forth in the Order. Said monitor shall acknowledge his/her willingness to comply with the monitoring by executing the acknowledgement provided by the Office of Professional Medical Conduct, and referred to in paragraph

i. Said monitor shall be familiar with the Respondent's history of chemical dependency, with this temporary surrender, and with the conditions contained in or annexed to the Order. Said monitor shall not be his treating physician.

ii. Said monitor shall see him at least twice during a quarter.

iii. Said monitor shall direct the Respondent to submit to therapy, evaluation or unannounced tests of his blood, breath, and/or urine for the presence of drugs or alcohol and shall report to the OPMC within 24 hours if at any time such a test is refused by the Respondent or is positive.

iv. Said monitor shall report to the OPMC a pattern of noncompliance with the

conditions.

v. Said monitor shall not be a personal friend.

vi. Said monitor shall submit to the OPMC quarterly reports either certifying the Respondent's compliance, or detailing his failure to comply, with each of the conditions. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.

c. That the Respondent shall be supervised in his medical practice by a licensed physician who shall be named in the conditions contained in or annexed to the Order. Said supervising physician shall be familiar with the Respondent's history of chemical dependency and with the Order and its conditions. Said supervising physician shall be in a position to regularly observe and assess his medical practice. Said supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgement provided by the OPMC, and referred to in paragraph 5(c).

i. Said supervising physician shall have the authority to direct the Respondent to submit to therapy, evaluation or unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to the Office within 24 hours if at any time such a test is refused by him or is positive.

ii. Said supervising physician shall submit to the OPMC quarterly reports regarding the quality of the Respondent's medical practice, any unexplained absences from work and certifying his compliance or detailing his failure to comply with each condition.

d. The Respondent will continue in treatment with a health care professional or a treatment program for as long as the health care professional or treatment program determines it is necessary.

i. The treating health care professional or program shall submit to the OPMC quarterly reports certifying that he is complying with the treatment.

ii. Said treating health care professional or program shall report to the Office immediately if the Respondent drops out of treatment.

iii. Said treating health care professional or program shall acknowledge his/her/its willingness to comply with the above-mentioned reporting by executing the acknowledgement provided by the OPMC and referred to in paragraph 5(b).

8. The conditions set out in paragraph 7 are the minimum conditions that will be required and that other conditions may be added by the committee at the time of license restoration, and that the costs of complying with all such conditions will be the Respondent's responsibility. Any failure by the Respondent to comply with the conditions or limitations, imposed upon license restoration, may result in disciplinary action being brought against him charging professional misconduct as defined by the New York State Education Law, including but not limited to N. Y. Educ. Law Section 6530(29)(McKinney Supp. 1996). That section defines professional misconduct to include "violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law." (Emphasis added.)

9. The Respondent shall submit signed statements to the Director of the Office of Professional Medical Conduct, on an annual basis, certifying that he has not practiced medicine, in any location, at any time subsequent to the issuance of this Order, utilizing forms supplied to me by the Office of Professional Medical Conduct. He shall advise the Director of OPMC within 30 days of a change of address.

10. The Respondent shall upon receipt of this Order submit to the Office of Professional Medical Conduct the executed waivers of patient confidentiality to his treatment as described in paragraph 5 above, which forms were provided to me by the Office of Professional Medical Conduct.