



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

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

Paula Wilson
Executive Deputy Commissioner

November 8, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

P. Kithsen Dias, M.D.
3815 Church Avenue
Brooklyn, New York 11203

Nathan L. Dembin, Esq.
26 Broadway
New York, New York 10004

Roy Nemerson, Esq.
NYS Department of Health
Bureau of Professional
Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of P. Kithsen, Dias, M.D.

Dear Dr. Dias, Mr. Nemerson and Mr. Dembin:

Enclosed please find the Determination and Order (No. ARB 93-93) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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.

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

Very truly yours,

REDACTED

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rg
Enclosure

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

IN THE MATTER
OF
P. KITHSEN DIAS, M.D.

X
:
:
ADMINISTRATIVE
REVIEW BOARD
REMAND
ORDER NO. 93-93
:
X

The Administrative Review Board for Professional Medical Conduct (hereinafter the "REVIEW BOARD"), consisting of ROBERT M. BRIBER, WINSTON S. PRICE, M.D., MARYCLAIRE B. SHERWIN, EDWARD C. SINNOTT, M.D. and WILLIAM B. STEWART, M.D.¹ held deliberations on September 17, 1993 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "HEARING COMMITTEE") July 1, 1993 Determination finding Dr. P. Kithsen Dias guilty of professional misconduct and revoking his license to practice medicine in the State of New York. Dr. Dias requested the review through a Notice of Review which the Board received on July 9, 1993. James F. Horan served as Administrative Officer to the Review Board. Nathan Dembin Esq. submitted a brief for Dr. Dias on August 10, 1993. Roy Nemerson, Esq. filed a response brief on behalf of the Office of Professional Medical Conduct on August 17, 1993.

¹. Dr. Stewart participated in the deliberations by telephone.

SCOPE OF REVIEW

New York Public Health Law (PHL) Section 230(10)(i), Section 230-c(1) and Section 230-c(4)(b) provide that the Review Board shall review:

- whether or not a Hearing Committee Determination and penalty are consistent with the Hearing Committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL Sec. 230-a.

PHL Sec. 230-c (4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

PHL Sec. 230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

OPMC brought this proceeding against Dr. Dias pursuant to Public Health Law Section 203(10)(p) and Education Law Section 6530(9), which provide an expedited hearing in cases in which professional misconduct charges against a physician are based upon a prior criminal conviction in New York or another

jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this matter found that the Department had met its burden of proof in establishing that the Respondent had been convicted in New York State Supreme Court, for New York County on six counts of criminal sale of a controlled substance, in violation of New York Penal Law Section 220.65. The Committee found that the Supreme Court sentenced the Respondent to six months imprisonment, placed him on probation for five years and ordered that he perform 500 hours community service. The Committee concluded that the Respondent's actions which were the basis of the criminal conviction constituted professional misconduct.

The Hearing Committee voted to revoke the Respondent's license to practice medicine in the State of New York. The Committee determined that the Respondent knew what he was doing when he sold controlled substance prescriptions, that his conduct was a breach of the public trust and that the Respondent's conduct demonstrated that he lacked the moral integrity to practice medicine. The Hearing Committee declined to hear any testimony from witnesses on behalf of the Respondent, other than the Respondent himself, because the Committee believed that the sentencing judge had reviewed thousands of pages of documents at

the time of the sentencing, which included letters of support. The Committee felt that a parade of witnesses would serve no useful purpose.

THE REQUEST FOR REVIEW

The Respondent has asked that the Review Board reverse and annul the Hearing Committee's Determination, because the Committee erred by failing to hear, consider and evaluate significant mitigating factors and by totally excluding evidence or argument pertaining to the nature, facts and circumstances surrounding the Respondent's conviction. The Respondent argues further that the Hearing Committee erred, to the Respondent's detriment, in prohibiting argument of any current mitigating factors.

The Office of Professional Medical Conduct argues that the Review Board does not have the authority to annul and reverse the Hearing Committee's Determination. OPMC contends that the Board's role is to determine whether the Hearing Committee imposed an appropriate penalty. OPMC notes that they believe that the revocation is an appropriate penalty considering the Respondent's criminal conviction. OPMC would not object, however, if the Hearing Record is reopened so that the Hearing Committee could consider proper evidence relating to the nature and severity of the penalty.

THE REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board votes unanimously to remand this case to the Hearing Committee for an additional hearing. The Board is unable to determine whether the penalty which the Hearing Committee imposed on this Respondent is appropriate, because the Respondent did not have the opportunity to present evidence to the Hearing Committee in mitigation of a penalty.

The Review Board orders that the Hearing Committee reconvene and permit the Respondent to offer proper evidence relating to the nature and severity of the penalty which would be appropriate in light of the criminal offenses which the Respondent committed. At the conclusion of the second hearing, the Committee shall conduct further deliberations and issue a Supplemental Determination setting out what penalty is appropriate in this case in light of all the evidence from both days of the hearing.

Upon receipt of the Hearing Committee's Supplemental Determination, each party will have thirty days to submit an additional brief to the Review Board concerning the Supplemental Hearing Committee Determination. The penalty which the Hearing Committee imposed in their initial Determination and Order shall remain stayed during the Remand, until such time as the Review Board issues a Final Determination in this case.

ORDER

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

1. This case is remanded to the Hearing Committee on Professional Medical Conduct for an additional hearing, to consider proper evidence relating to the nature and severity of the penalty against the Respondent.
2. At the conclusion of the hearing, the Committee shall serve a Supplemental Determination and Order on the parties and on the Review Board.
3. The Hearing Committee's Determination revoking the license of P. Kithsen Dias, M.D. to practice medicine in New York State shall remain stayed until the Review Board issues a final Determination.

ROBERT M. BRIBER
WINSTON S. PRICE, M.D.
MARYCLAIRE B. SHERWIN
EDWARD C. SINNOTT, M.D.
WILLIAM A. STEWART, M.D.

IN THE MATTER OF P. KITHSEN DIAS, 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. Dias.

DATED: Albany, New York

~~October~~, 1993
November 5

REDACTED

ROBERT M. BRIBER

IN THE MATTER OF P. KITHSEN DIAS, 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. Dias.

DATED: Brooklyn, New York
October , 1993

REDACTED

WINSTON S. PRICE, M.D.

IN THE MATTER OF P. KITHSEN DIAS, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Dias.

DATED: Malone, New York

October 8, 1993

REDACTED

MARYCLAIRE B. SHERWIN

IN THE MATTER OF P. KITHSEN DIAS, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Dias.

DATED: Roslyn, New York
October 26, 1993

REDACTED

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF P. KITHSEN DIAS, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the result in the Determination and Order in the Matter of Dr. Dias.

DATED: Syracuse, New York

October , 1993

REDACTED

WILLIAM A. STEWART, M.D.