



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.

Commissioner

Paula Wilson

Executive Deputy Commissioner

June 25, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Nathan W. Denbin, Esq.
26 Broadway
New York, New York 10004

David W. Smith, 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. Dembin and Mr. Smith:

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

New York State Department of Health
Office of Professional Medical Conduct
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.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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 all action 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. Hovan, Esq., Administrative Law Judge
New York State Department of Health,
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

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. Hovan 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.

Very truly yours,

REDACTED

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

-----X
IN THE MATTER,

OF

P. KITHSEN DIAS, M.D.
-----X

: HEARING COMMITTEE'S
: DETERMINATION
: AND ORDER
: NO. BPMC-93-93

A Notice of Hearing and Statement of Charges, both dated February 24, 1993 were served upon the Respondent, P. Kithsen Dias, M.D. STEVEN M. LAPIDUS, M.D. (Chairperson), DANIEL A. SHERBER, M.D. and KENNETH KOWALD duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. Benjamin J. Migliore, Administrative Law Judge, served as the Hearing Officer. A hearing was held on April 27, 1993 at 5 Penn Plaza, Sixth Floor - Conference Room A, New York, New York. The Department of Health appeared by David W. Smith, Assistant Counsel. The Respondent appeared by Nathan Denbin, Esq. of 26 Broadway, New York, New York 1004. Evidence was received and a transcript of this proceeding was made.

STATEMENT OF CASE

The proceeding was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of New York Education Law, Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional

misconduct, if committed in New York. The scope of the expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon a licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to New York Education Law, Section 6530(9)(a)(i) (McKinney Supp. 1993). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order.

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 transcript page numbers or exhibits. The citations represent 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.

1. P. Kithsen Dias, M.D. was authorized to practice medicine in New York State on July 23, 1976 by the issuance of license number 127747 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994. (Pet. Ex. #1)

2. On May 21, 1991, after trial and representation by counsel, Respondent was found guilty of six counts of the criminal sale of a prescription for a controlled substance in violation of Section 220.63 of the New York State Penal Law. (Pet. Ex. #1)

3. Respondent was sentenced to serve six months in prison and five years probation for each of the six counts, such probation to run concurrently. (Pet. Ex. #1) The Respondent must also do 500 hours of community service as directed by the Department of Probation. (Pet. Ex. #5, p. 45)

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.

The Hearing Committee unanimously concluded that the Department of Health had met its burden of proof. The preponderance of the evidence clearly demonstrated that the Respondent's conduct underlying the felony conviction for the criminal sale of a prescription for a controlled substance resulting in the six month prison term with five years probation and 500 hours of community service constituted misconduct under New York Education Law Section 6530(9)(a)(i).

The Hearing Committee, therefore, sustained the Specification of misconduct contained in the Statement of Charges.

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 medical license should be revoked. 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.

Respondent was convicted of selling a prescription for a controlled substance, a clear violation of federal law. Respondent's misconduct was serious and warrants a significant penalty, one that is greater than mere censure or reprimand.

The Hearing Committee took into consideration that Respondent never had a criminal record before and had a career in public service for over 19 years helping many patients to function better. However, there was no doubt that the Respondent knew what he was doing by engaging in the sale of the prescription for the controlled substance. Such conduct constitutes a serious breach of trust. His conduct clearly demonstrated that Respondent lacks the moral integrity to practice the profession of medicine.

The Hearing Committee made reference to the comments of the sentencing Supreme Court Judge who stated that "I have absolutely no doubt that the defendant was engaged in systematic and continuous Medicaid fraud, and that he knew exactly what he was doing." (Pet. Ex. #5, pg. 44) The Committee did not give any weight to Respondent's testimony at the hearing that his difficulties with the English language are what got him in trouble with the law. (See Tr. pp. 65, 66) Rather, the Committee agreed with the findings of the sentencing judge. Respondent's testimony at the hearing clearly demonstrated that he knew exactly what he was doing when he sold a prescription for a controlled substance.

The Committee also felt that parading a number of witnesses through this hearing would serve no useful purpose. (See Tr. pg. 31) The sentencing minutes (Pet. Ex. #5) demonstrate that "a couple of thousand of pages of documents" were reviewed by the sentencing judge which were submitted by the Respondent in his behalf. These documents included letters of support from patients, other physicians, nurses and people the Respondent practiced with. (Pet. Ex. #5, pg. 5)

In view of Respondent's criminal conduct, the Hearing Committee concluded that Respondent lacks the moral integrity expected of a member of the medical profession. Consequently, the Hearing Committee concluded that revocation is the appropriate sanction.

ORDER

Based upon the foregoing, it is hereby ordered that:

1. The Specification of professional misconduct contained in the Statement of Charges (Pet. Ex. #1) is sustained; and

2. Respondent's license to practice medicine in New York State is revoked.

DATED: POUGHKEEPSIE, NEW YORK
JUNE 15, 1993

REDACTED

~~STEVEN M. LAPIDUS, M.D.~~
Chairperson

DANIEL A. SHERBER, M.D.
KENNETH KOWALD

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

Nathan W. Denbin, Esq.
26 Broadway
New York, New York 10004

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

APPENDIX I

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

IN THE MATTER

OF

P. KITHSEN DIAS, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: P. KITHSEN DIAS, M.D.
1815 Church Avenue
Brooklyn, New York 11203

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 27th day of April, 1993 at // o'clock in the *forenoon* of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before April 16, 1993.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before April 16, 1993 and a copy of all

papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 101(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.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT SUSPENDS OR REVOKES YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE

AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT
YOU IN THIS MATTER.

DATED: New York, New York
February 24, 1993

REDACTED

CHRIS STERN HYMAN /
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

David W. Smith
Assistant Counsel
212-613-2617

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

-----X
IN THE MATTER

: STATEMENT

OF

: OF

P. KITHSEN DIAS, M.D.

: CHARGES
-----X

P. KITHSEN DIAS, M.D., the Respondent, was authorized to practice medicine in New York State on July 23, 1976 by the issuance of license number 127747 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994.

SPECIFICATION

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(i) (McKinney Supp. 1993) by having been convicted of committing an act constituting a crime under New York State Law in that:

On May 21, 1991, after trial, during which Respondent was represented by Counsel, Respondent was found guilty of six counts of the criminal sale of a

prescription for a controlled substance
in violation of Section 220.65 of the
New York State Penal Law. Thereafter,
Respondent was sentenced to serve six
(6) months in prison and to 5 years
probation for each of the six counts,
such probation to run concurrently.

DATED: New York, New York

February 24, 1993

CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct