



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 13, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Nathan L. Dembin, Esq.
Nathan L. Dembin & Associates, P.C.
225 Broadway, Suite 1905
New York, New York 10007

David W. Smith, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

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

Dear Mr. Dias, Mr. Dembin and Mr. Smith:

Enclosed please find the Determination and Order (No. 93-93R) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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 (i), 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. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
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. 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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmm

Enclosure

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

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

DETERMINATION
AND
ORDER
OF THE
HEARING COMMITTEE
ORDER NO. BPMC-93-93R

This matter was originally heard on April 27, 1993. A decision dated June 15, 1993 was issued by the Committee. By a decision dated October 26, 1993, The Administrative Review Board remanded this proceeding to the original Committee, consisting of STEVEN M. LAPIDUS, M.D., Chairperson, DANIEL A. SHERBER, M.D. and KENNETH KOWALD. Further proceedings were held on March 22, 1994 at the offices of the State Board For Professional Medical Conduct (Hereinafter referred to as the "Board"), 5 Penn Plaza, New York, New York. JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as Administrative Officer. served upon

The hearing on Remand was conducted pursuant to §230 (10)(e) of the Public Health Law and §301-307 and §401 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of Section 6530 of the New York Education Law by KITHSEN DIAS, M.D. (hereinafter referred to as "Respondent").

The Board appeared by David W. Smith, Esq., of counsel to Peter J. Millock, Esq., General Counsel. Respondent appeared by Nathan L. Dembin, Esq. Evidence was received and a transcript of this proceeding was made. The parties submitted written closing briefs and arguments.

STATEMENT OF CASE

The proceeding was brought pursuant to Public Health Law §230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of New York Education Law, §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 §6530(9)(a)(i) based upon the fact that he was convicted of an act constituting a crime under New York State law. The charges are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges which is attached to and made a part of this Determination and Order as appendix I.

Respondent testified in his own behalf and called these witnesses:

Henry Pinkster, M. D.

Character Witness

Dennis Guttsman

Character Witness

Barbara Simon

Character Witness

FINDINGS OF FACT

The Committee adopts the factual statement set forth under the First Specification on Pages 1 and 2 of the Statement of Charges (Appendix I) as its findings of fact and incorporates them herein.

CONCLUSIONS

Respondent does not deny the basic facts underlying this case. Hence, there is no question that the Board has met its burden of proof. The sole question is what if any penalty to attach to the conduct which has been established. The Committee listened attentively to the witnesses who stated that Respondent was missed at the institution at which he formerly practiced. Respondent apparently enjoyed, and continues to enjoy an excellent professional reputation among his colleagues and patients.

The problem is that an excellent reputation cannot overcome the very serious crimes Respondent committed. Although the Committee acknowledges Respondent's claim that he acted, not with evil intent but rather out of ignorance, the Committee rejects this as exculpatory on two grounds. First, in order to be convicted, Respondent had to have been proven to have criminal intent, beyond a reasonable doubt. Furthermore, even assuming that Respondent did not have a criminal intent, but rather was duped, such a lack of sophistication cannot be tolerated. The fact is that physicians must be wise to the ways of unscrupulous patient, especially when dealing with controlled substances. It follows then that Respondent's argument for mitigation, on the grounds chosen, must fail.

Of greater concern to the panel than the arguments put forth by Respondent was his testimony and his demeanor during his testimony. Respondent, in his testimony convinced the Committee that he has no remorse. This lack of remorse is probably due to the further aspect of his testimony to the effect that he believes he did nothing wrong. The undeniable fact is that Respondent prescribed drugs for persons who did not need them. Physicians are simply not supposed to do such a thing. Furthermore, physicians are required to put forth sufficient effort to avoid being duped by the unscrupulous. Respondent failed both these obligations and did so to the extent that a court could find, beyond a reasonable doubt, that he acted with criminal intent. Yet in light of all of this, Respondent asserts his innocence of any culpability. Apparently, Respondent believes that his only fault was in getting caught, for which indeed he has paid a heavy price.

In addition to Respondent's refusal to acknowledge any kind of culpability was his

presentation of his position. The Committee noted that Respondent had prepared answers for such questions as "how do you feel...?" Even when Respondent's counsel tried to elicit answers of greater depth, Respondent would refer to his notes. The Committee finds this disingenuous to say the least. The Committee is left to speculate as to just how this experience has effected Respondent as a practitioner and more generally as a member of society. While Respondent's written and prepared remarks sounded acceptable, the fact that he refused to speak directly to the Committee and his own attorney regarding his mental status as a result of these events, leads the Committee to conclude that he prepared remarks designed to satisfy this body but may or may not actually hold the positions represented in those remarks.

When a physician is found to have betrayed his professional office by prescribing controlled substances for other than medical purposes, it can be said that the perpetrator has, of his own will abandoned his license. Hence, it is only left to the State to affirm his election. Under the system of Direct Referral, a physician is given the opportunity to convince a Committee that some penalty other than revocation is appropriate. While there are situations wherein a Committee has found that a less stringent penalty is appropriate, that is based upon a finding that the practitioner realizes his faults and will put forth extensive efforts to correct himself and his practice. In this case, based upon the testimony provided, the Committee is presented with a person who believes his greatest shortcoming is in being caught by the authorities. He has shown not the slightest inclination toward self appraisal and remediation. Under these circumstances, this Committee is convinced that revocation is warranted.

ORDER

Based upon the foregoing it is hereby **ORDERED** that,

1. The specifications of professional misconduct contained in the Statement of Charges in this matter be **SUSTAINED**; and
2. The license of Respondent to practice medicine in this state be **REVOKED**.

DATED: New York, New York

June 6, 1994

REDACTED

STEVEN M. LAPIDUS, M.D., Chairperson
DANIEL A. SHERBER, M.D.
KENNETH KOWALD

TO:

David W. Smith, Esq.
Associate Counsel,
Bureau of Professional Medical Conduct
5 Penn Plaza
New York, N.Y.

Nathan L. Dembin, Esq.
Nathan L. Dembin & Associates, P.C.
225 Broadway, Suite 1905
New York, N.Y. 10007

Kithsen Dias, M.D.
3815 Church Ave.
Brooklyn, N.Y. 11203

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.
3815 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 11 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 27, 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,
Respondant 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

REDACTED

CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct