



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

May 21, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin C. Roe, Esq.
Associate Counsel
NYS Dept. of Health
Corning Tower-Room 2438
Albany, New York 12237

Agnes Cecilia Bascon Kintanar, M.D.
19430 East Empty Saddle Road
Walnut, California 91189

RE: In the Matter of Agnes Cecilia Bascon Kintanar, M.D.

Effective Date: 05/28/96

Dear Mr. Roe and Dr. Kintanar:

Enclosed please find the Determination and Order (No. 96-128) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "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 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.

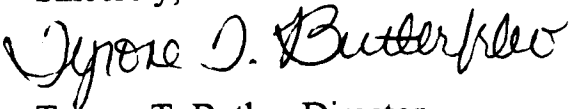
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw
Enclosure

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

COPY

IN THE MATTER
-OF-
AGNES CECILIA BASCON KINTANAR, M.D.
Respondent

DETERMINATION

AND

ORDER

BPMC-96-128

A Notice of Referral Proceeding and Statement of Charges, both dated January 24, 1996, were served upon the Respondent, Agnes Cecilia Bascon Kintanar, M.D. **WILLIAM P. DILLON, M.D. (Chair), JOSEPH G. CHANATRY, M.D. and D. MARISA FINN** 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. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Kevin C. Roe, Esq., Associate Counsel. The Respondent failed to appear in person and was not represented by counsel. Evidence was received, statements were heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited proceeding where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(b) (found guilty of misconduct by another state) and Education Law §6530(9)(d) (disciplinary action taken against the license by another state). The charges herein arise from Respondent admitting before the Medical Board of California, to falsifying medical records with the intent to defraud; making false representations on a document relating to the practice of medicine; filing or causing to be filed false insurance claims; committing acts of dishonesty and/or corruption relating to the qualifications, functions or duties of a physician; The allegations in this proceeding are more particularly set forth in the Statement of Charges, a copy of which is attached to 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 Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Agnes Cecilia Bascon Kintanar, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on July 30, 1982, by the issuance of license number 151032 by the New York State Education Department. (Pet. Ex. #3).

2. On or about May 30, 1995, the Medical Board of California adopted the Stipulation and Waiver Agreement executed by the Respondent and the State of California. (Pet. Ex. #2)

3. The Respondent was charged by the Medical Board of California with committing acts which constituted unprofessional conduct and she admitted this to be true. (Pet. Ex. #2)

4. The actions which were found by the Medical Board of California to constitute unprofessional conduct included submitting false insurance reports and/or claims for reimbursement; employing unlicensed personnel who were neither physicians or licensed physical therapists who diagnosed patients physical therapy needs and provided physical therapy; referring a patient who had presented to the Respondent with potentially severe post-abortion complications to a hospital emergency room, without advising the hospital emergency room about the referral, without stabilizing the patient prior to referring her, without sending an adequate history and physical evaluation with the patient and without assuring safe transit to the hospital emergency room; and failing to provide appropriate treatment for a patient who was eight months pregnant and presented to the Respondent with difficulty breathing, chest pain, headache and sudden markedly elevated blood pressure, in that Respondent did not perform the appropriate tests to rule out preeclampsia, did not seek an obstetrical consultation nor did she make an appropriate referral but sent her home. (Pet. Ex. # 2)

5. The State of California revoked the Respondent's license, stayed the revocation, suspended the Respondent's license for 120 days and placed the Respondent on probation for seven years. (Pet. Ex. # 2)

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 Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was both found guilty of professional misconduct and had disciplinary action taken or had his application for a license refused by a professional disciplinary agency of another state. The underlying conduct which was the basis for the finding by California would constitute professional misconduct in New York. Specifically, the Hearing Committee found the Respondent's actions would fall within the definitions of misconduct set forth at N.Y. Education Law §6530(2) (Practicing the profession fraudulently), §6530(3) (Practicing the profession with negligence on more than one occasion), §6530(4) (Practicing the profession with gross negligence on a particular occasion), §6530(5) (Practicing the profession with incompetence on more than one occasion), §6530(6) (Practicing the profession with gross incompetence) and §6530(11) (Permitting an unlicensed person to perform activities requiring a license).

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 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.

The Hearing Committee views the actions committed by the Respondent to be extremely egregious misconduct. Of the utmost concern was the conduct relating to the insurance fraud and the gross negligence concerning the Respondent's failure to take appropriate steps in the diagnosis and care of the pregnant patient who shortly after being sent home died. Respondent did not appear nor was she represented by counsel. The record contains no evidence about any rehabilitative efforts she may have made subsequent to the California decision. The Hearing Committee views the Respondent's conduct as evidence of a lack of moral fitness for the practice of medicine. It is the Hearing Committee's duty to protect the consumers of medical services of this state. The practice of medicine is a privilege to be bestowed on those who warrant it. The Respondent has showed that she does not possess the necessary good moral character to be allowed to exercise this privilege. The Hearing Committee unanimously determined that a person capable of such conduct should not be afforded the privilege of practicing medicine in New York and that revocation is the only appropriate sanction under the circumstances.

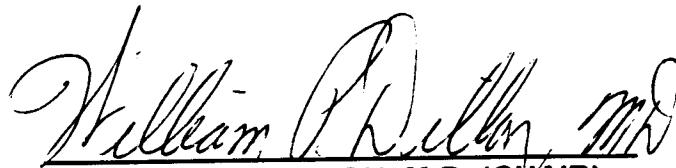
ORDER

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

1. The First and Second 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 **REVOKED**.

DATED: Buffalo, New York

May 18TH, 1996



WILLIAM P. DILLON, M.D. (CHAIR)

Joseph G. Chanatry, M.D.

D. Marisa Finn

TO: KEVIN C. ROE, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

AGNES CECILIA BASCON KINTANAR, M.D.
19430 East Empty Saddle Road
Walnut, California 91189



APPENDIX ONE

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

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IN THE MATTER : STATEMENT
OF : OF
AGNES CECILIA BASCON KINTANAR, M.D. : CHARGES

-----X

AGNES CECILIA BASCON KINTANAR, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 30, 1982 by the issuance of license number 151032 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 15, 1995, Respondent's license to practice medicine in the State of California was revoked by the Division of Medical Quality, Medical Board of California, based on a Stipulation and Waiver Agreement in which Respondent admitted creating, altering or modifying medical records with fraudulent intent in violation of California Business and Professions Code (B & P) §2262; knowingly making or signing a certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or non-existence of a state of facts in violation of B & P §2261; knowingly presenting or causing to be presented false or fraudulent claims for payment of a loss under a contract

of insurance in violation of B & P §810(a)(1); commission of acts involving dishonesty and/or corruption which are substantially related to the qualifications, functions or duties of a physician and surgeon in violation of B & P §2234(e); gross negligence in violation of B & P §2234(b); repeated acts of negligence in violation of B & P §2234(c); incompetence in violation of B & P 2264; and aiding and abetting the unlicensed practice of medicine in violation of B & P §2264. The revocation of Respondent's license was stayed and Respondent placed on probation for seven years with terms and conditions which require 120 days of actual suspension, continuing medical education, a course in ethics, an intensive clinical training program, oral and/or written exams prior to active practice, monitoring of any practice, restriction to the general practice of medicine and reimbursement of investigative costs. The conduct upon which the California discipline was based would, if committed in New York State, constitute professional misconduct under New York Education Law §6530(2), (3), (4), (5), (6) and/or (11).

FIRST SPECIFICATION

Respondent is charged with 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 misconduct under the laws of New York State in violation of New York Education Law §6530 (9) (b) (McKinney Supp. 1996) in that, Petitioner alleges:


1. The facts in Paragraph A.

SECOND SPECIFICATION

Respondent is charged with having his license to practice medicine revoked, suspended or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension, or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State in violation of New York Education Law §6530 (9) (d) (McKinney Supp. 1996) in that, Petitioner alleges:

2. The facts in Paragraphs A.

DATED: *February 22*, 1996
Albany, New York


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