Public

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

IN THE MATTER OF ANTHONY JOSEPH SARRO, M.D.	COMMISSIONER'S ORDER AND NOTICE OF HEARING

TO: ANTHONY JOSEPH SARRO, M.D.
308 Graham Ave
Brooklyn, NY 11211-4904

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by ANTHONY JOSEPH SARRO, M.D. the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12)(a), that effective immediately ANTHONY JOSEPH SARRO, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to the procedural provisions set forth in N.Y. Pub. Health Law §230(12)(a) or unless modified by the Commissioner upon the presentation to the Director of the Office of Professional Medical Conduct, by the Respondent, of credible evidence of remediation of factors causing imminent danger as set forth in Schedules I and II appended to and incorporated by this order.

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on July 20, 2011, at 10:00 a.m., at the

offices of the New York State Health Department, 90 Church Street, 4th floor, Hearing Room 1, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §301(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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of

the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
July 14 ,2011

REDACTED

Nirav R. Shah, M.D., M.P.H.
Commissioner of Health
New York State Health Department

Inquiries should be directed to:

Roy Nemerson
Deputy Counsel / BPMC
N.Y.S. Department of Health
Division of Legal Affairs
90 Church Street, 4th Floor
New York, NY 10007
212-417-4450

Schedule I

If and when Respondent believes he has addressed and complied with

A. Each of the remediation requirements set forth by the Director of Surveillance of the New York City Department of Health and Mental Hygiene, Bureau of Communicable Disease in his letter of July 5, 2011, in follow-up of the of the Cease & Desist Order issued by the Commissioner of Health and Mental Hygiene of the City of New York and served on June 20, 2011. [Letter and Order are incorporated and attached, marked as Schedule II]; and

B. Each of the requirements enumerated below, relating to the remediation of professional performance and competence, and physical, procedural, and knowledge deficits,

Respondent may submit to the Director preliminary documentary evidence of that compliance. Such evidence shall include

- Completed Infection Prevention Checklist For Outpatient Settings: Minimum Expectations for Safe Care (Centers for Disease Control)
- Invoices of equipment and supply purchases and services commissioned; photographs;
- Written and certified reports of satisfactory inspection by suitably credentialed infection control consultants;
- Comprehensive written office maintenance, preparation, and practice procedures and protocols, with evidence of training and competence of Respondent and staff regarding those procedures and protocols;
- Written staff training protocols;
- Certification of successful completion, by Respondent and all staff with related responsibilities, of infection control training and testing at a proctored program.

Upon receipt of the preliminary documentary evidence, if the Director, in the reasonable exercise of his discretion, finds such evidence to be sufficient, he shall have Respondent's professional office(s) reinspected, with the Respondent's full cooperation required, by staff members of the New York State Health Department or other designees. The results of that reinspection will be reported to the Commissioner, who will determine what if any modifications shall be made to the Summary Order.

Remediation:

1. Respondent and each staff member other than persons with exclusively clerical responsibilities shall enroll in, complete, and successfully pass a proctored training and testing program in the area of infection control. This program is subject to the Director of OPMC's prior written approval.

2. Respondent shall review and adhere to Occupational Safety & Health Administration (OSHA) Bloodborne Pathogens Standards. [These standards are set forth at 29 CFR 1910.1030.]

3. Respondent shall, in accordance with the OSHA Bloodborne Pathogens Standards, establish an exposure control plan to be updated annually to reflect any generally accepted changes that will help eliminate or reduce exposure to blood-borne pathogens and shall have a written sharps injury protocol readily available for reference.

4. Respondent shall use engineering controls that include approved sharps disposal containers and safer medical devices such as sharps with engineered sharps-injury protection and, if appropriate, needleless systems. Respondent shall ensure that approved sharps containers are placed in close proximity to the procedure table or next to the surgical cart to facilitate proper sharps disposal.

5. Respondent shall ensure that all hand-washing sinks are maintained and equipped with soap and paper towels.

6. Respondent shall avoid manually recapping contaminated needles when feasible. When recapping cannot reasonably be avoided, Respondent shall use an approved mechanical device or a one handed "scoop" technique for recapping.

7. Respondent shall draw up medications as close as possible to the time of administration. If medications will not be used immediately after removal from the vial, the syringes shall be labeled with the appropriate information including the contents, the date, and the time the medication was drawn up.

8. Respondent shall, upon opening a multi-dose vial of medication, label the vial according to the institution's policy. At a minimum, Respondent shall discard medication vials if the contents are outdated (manufacturer's expiration date has been reached) or grossly contaminated or if the vial has been entered without proper aseptic technique.

9. Respondent shall ensure that medications labeled as "single-patient use" are prepared as such, using aseptic technique, and that any unused portions are discarded in accordance with the established rules/regulations governing the disposal of medications. Respondent shall maintain a record of all multi-dose vials purchased, when used, and how and when disposed.

10. Respondent shall maintain aseptic technique and shall not reuse syringes and/or needles to draw up medications from multiple-dose vials. Immediately after using a syringe and/or needle on a patient, the Respondent shall promptly dispose the syringe and/or needle in an appropriate puncture resistant sharps container.

SCHEDULE II

July 5, 2011

Anthony Sarro, MD
308 Graham Ave.
Brooklyn, NY 11211

Dear Dr. Sarro,
During our site visits to your office located at 308 Graham Ave, Brooklyn, NY on June 13 and 20, 2011, we noted several violations of standard infection control practices that must be remedied before the Order of the Commissioner issued on June 20, 2011 can be lifted and medical services can resume. Corrective steps of primary importance are reprocessing of patient care equipment, hand hygiene, personal protective equipment and ensuring the safe use of multi-dose medication vials.

The requirements for lifting the Order are as follow:

1. Observe Standard Precautions for all patients. No distinction should be made between a patient with known bloodborne pathogens and any other patient.
2. Used surgical instruments need to be scrubbed with an enzymatic detergent before being reprocessed for reuse.
3. Surgical instruments and fiber optic laryngoscopes should be reprocessed in accordance with manufacturer's instructions. Once reprocessed they should be stored in a manner that prevents contamination.
4. Heat-tolerant critical devices, i.e. surgical instruments that may come in contact with blood or non-intact mucosal membranes, should be cleaned, packaged and sterilized before reuse. Hinged instruments must be sterilized in the open position.
5. Sterilized instruments should remain sealed in their packages until accessed for patient use and should be handled in a manner that prevents contamination prior to use.
6. The autoclave should be operated per manufacturer's instructions. These instructions should be readily available for all operators. Ensure that operators have adequate training prior to using the autoclave. A service contract must be in place and a maintenance log that includes manufacturer recommended performance indicators (e.g. spore strip testing) must be maintained.
7. Equipment that comes in contact with blood, mucosal membranes, non-intact skin or body fluids, such as the insufflation/suction pump, that cannot be appropriately and effectively cleaned and disinfected between patients must be replaced with modern equipment. Follow manufacturer's reprocessing instructions.
8. Perform hand hygiene after removing gloves and before and after contact with patients. Alcohol-based sanitizers may be used unless hands are visibly soiled. If hands are visibly soiled, wash with soap and water.
9. Use only FDA approved chemicals for high-level disinfection of heat-sensitive semi-critical devices (instruments that come in contact with mucous membranes or non-intact skin).
10. Sterile gloves must be worn for invasive procedures.
11. Discontinue use of personal auto lancet for testing patient blood sugar. Ensure that glucometers are cleaned and disinfected between uses according to manufacturer's recommendations. If the manufacturer does not have written instructions for reprocessing between patients do not share the device for multiple patients.
12. It is advised that all medications be single patient use only. Approved multi-dose vials should be labeled with the date of first use and stored per the manufacturer's recommendation. Multi-dose vials should not be stored or accessed in patient care area, and if they do enter the patient care areas they should be dedicated to that patient or discarded.
13. Personal protective equipment (gloves, mask, face shield, and gown) should be worn whenever performing procedures that may encounter blood or other potentially infectious materials.

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14. Office surfaces that may come in contact with patients must be routinely cleansed with an EPA-approved hospital-grade disinfectant or dilute chlorine bleach product (1:10 solution of bleach and water reconstituted as per manufacturer's instructions). Immediate surface cleaning and disinfection must be carried out for surfaces that are exposed to blood or potentially infectious materials.
15. Keep a refrigerator temperature log.
16. Dispose of expired medications.
17. Remove all chemicals not used for patient care or environmental disinfection from patient treatment areas.
18. Unlabeled bottles should be discarded.
19. Insulin syringes (labeled only in units) should not be used for administration of medications other than insulin. They should not be used for tuberculin skin tests.

Please prepare and submit to my office a written plan delineating how you will address each item in the above list. After review we will arrange a time to perform a repeat inspection and ask that you demonstrate the changes implemented to ensure that proper infection control practices are in place. If the conditions have been satisfied upon re-inspection, we will lift the prior Order.

If you have any questions regarding this letter, please do not hesitate to discuss them with me. A list of relevant links to guidelines is provided below for your review and reference.

Sincerely,

REDACTED

Don Weiss, MD, MPH
Director of Surveillance, Bureau of Communicable Disease
New York City Department of Health and Mental Hygiene

Recommended Guidelines
CDC Cleaning and Sterilization: http://www.cdc.gov/hicpac/Disinfection_Sterilization/2_approach.html
CDC Environmental Cleaning: http://www.cdc.gov/hicpac/pdf/guidelines/eic_in_HCF_03.pdf
CDC Hand Hygiene: http://www.cdc.gov/handhygiene/
CDC BG Monitoring: http://www.cdc.gov/injectionsafety/blood-glucose-monitoring.html
CDC Safe Injections main page: http://www.cdc.gov/injectionsafety/
CDC Safe Injections FAQs: http://www.cdc.gov/injectionsafety/providers/provider_faqs.html
FDA list of approved chemicals to disinfect instruments:
http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/ReprocessingofSingle-UseDevices/UCM133514
EPA list of approved surface disinfectants: http://www.epa.gov/oppad001/list_e_mycobact_hiv_hepatitis.pdf

cc: NYC DOHMH- M. Layton, MD, P. Kellner, RN, MPH, M. Antwi, MPH
NYS DOH- E. Clement, RN, MSN, CIC, E. Lutterloh, MD, MPH

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NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Thomas Farley, MD MPH
Commissioner

ORDER OF THE COMMISSIONER

TO: ANTHONY SARRO, MD
308 Graham Avenue
Brooklyn, N.Y. 11211

WHEREAS, staff of the New York City Department of Health and Mental Hygiene (the "Department") accompanied investigators assigned by the State Office of the Medicaid Inspector General to conduct a site visit at respondent's office on June 13, 2011; and

WHEREAS, reports of Department staff and State investigators indicate that respondent conducts surgical and other procedures at the above referenced office, and that he fails to follow manufacturer's recommendations for reprocessing/cleaning reusable surgical and other instruments that come in contact with patient mucous membranes and blood, uses disinfectants that are not sufficient or approved for the level of contamination incurred in procedures performed; utilizes outdated medications; and generally demonstrates a lack of knowledge of basic infection control principles necessary to safeguard patient health; and

WHEREAS, such lapses in standard infection control procedures and practices pose a danger to the health of all persons who may receive treatment from respondent and thereby constitute a nuisance as defined in the New York City Administrative Code §17-142; and

WHEREAS, pursuant to New York City Health Code ("Health Code") §3.07, "no person shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual ... [or] fail to do any reasonable act or take any necessary precaution to protect human life and health" and

WHEREAS, I find that respondent's continued operation of this office facility in these circumstances would constitute an ongoing nuisance, in violation of Health Code §3.09 and Administrative Code §§17-142 et seq.

IT IS HEREBY ORDERED that, upon receipt of a copy of this Order, respondent shall cease and desist from operating this office facility and practicing surgical or other procedures or seeing any patients until the Department has completed its investigation of the operations of the facility and such staff have determined that satisfactory standardized infection control practices, such as those recommended in the U.S. Centers for Disease Control, Guideline for Disinfection and Sterilization in Healthcare Facilities, 2008, have been instituted; and

IT IS FURTHER ORDERED that respondent shall not dispose of any material, substances or equipment in the facility until the Department investigation is completed; and

IT IS FURTHER ORDERED that duly authorized and identified employees and agents of the Department be provided full and complete access to the facility, to enable the Department to conduct such investigation as the Department may deem necessary, including but not limited to determining respondents' infection control practices and, in accordance with §555 of the New York City Charter, respondent shall provide access to all information which the Department may require to investigate respondent's infection control practices, including sterilization of equipment and administration of injectable medications to patients; such information shall include, but not be limited to, all systems for maintaining appointment and billing information. patient records, including the names, addresses and other identification information as may be necessary, of all individuals to whom any treatments were administered by respondent during a period of time to be determined, and the kind of treatment administered; the names and addresses of all other persons employed by respondent or providing treatments to patients during such time; names, addresses and other identification information concerning distributors of supplies and medications used in this practice, and records of purchases of injectable medications, syringes and medical and other substances and supplies; and sterilizing/disinfecting equipment and supplies; and

IT IS FURTHER ORDERED, that all medications and other substances determined by the Department as substantially likely to be or have been improperly prescribed or administered by respondents shall be embargoed and seized by Department staff in accordance with Health Code §3.03.

To object to this Order, you must contact Dr. Don Weiss at the Department's Bureau of Communicable Disease Control at (347) 396-2626, within three (3) days of delivery of this Order. If you have any questions about how to comply with this Order, please contact Dr. Weiss.

Dated: 6/17/11

REDACTED

Thomas A. Farley, M.D., M.P.H.
Commissioner

WARNING

Failure to comply with an Order of the Commissioner of Health and Mental Hygiene is a violation of the Health Code and a misdemeanor for which you may be subject to civil and/or criminal penalties, including fines, forfeitures and imprisonment.

Delivered on (date and time): ______________________________

Delivered by: ______________________________

Received by: ______________________________ (signature)

______________________________ (print name)

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

IN THE MATTER OF ANTHONY JOSEPH SARRO, M.D.	STATEMENT OF CHARGES

ANTHONY JOSEPH SARRO, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 6, 1961, by the issuance of license number 086374 by the New York State Education Department. Since September 25, 2001, Respondent has been subject to Order # BPMC 01-218, which is attached to this Statement of Charges, marked as Schedule III, and incorporated.

FACTUAL ALLEGATIONS

A. On multiple occasions at times during and preceding approximately June 20, 2011, when an Order (Schedule II, attached) issued by the Commissioner of Health and Mental Hygiene of the City of New York was served upon Respondent, requiring him to Cease & Desist operating his medical facility located at 308 Graham Ave, Brooklyn, NY, on June 20, 2011, and practicing surgical or other procedures or seeing patients, Respondent:

1. Failed to maintain conditions compliant with scientifically accepted infection control practices;
2. Failed to appropriately maintain and reprocess instruments and equipment;
3. Failed to appropriately maintain and administer medications.

B. Respondent is required, pursuant to the terms of Order # BPMC 01-218 (Schedule III, attached) to, among other things, fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its investigation of all matters regarding Respondent, meet with a person designated by the Director of OPMC as directed, and to respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. On or about and after June 22, 2011, Respondent failed to comply with these conditions by:

1. Failing to appear and be questioned, under oath, regarding several issues under investigation, as required;
2. Failed to provide documents and information regarding several issues under investigation, as required;
3. Failed to timely provide patient medical records, as required.

C. On dates and occasions unknown to Petitioner, but known to Respondent, he caused and permitted Junior Espinal, an individual whom Respondent knew to be not a licensed health care professional, to perform physical examinations of Respondent's patients.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

INFECTION CONTROL PRACTICES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(47) by failing to use scientifically accepted infection control practices as established by the department of health pursuant to section two hundred thirty-a of the public health law, as alleged in the facts of:

1. Paragraph A and its subparagraphs.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

2. Paragraph A and its subparagraphs.

THIRD SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

3. Paragraph A and its subparagraphs, and Paragraph C.

FOURTH SPECIFICATION

DELEGATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(25) by delegating professional responsibilities to a person when the person delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them, as alleged in the facts of:

4. Paragraph C.

FIFTH THROUGH SEVENTH SPECIFICATIONS

VIOLATING A CONDITION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any condition imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of:

5. Paragraph B and B1.
6. Paragraph B and B2.
7. Paragraph B and B3.

DATE: July 13, 2011
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

SCHEDULE III

New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D., M.P.H.Dr.P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Denise M. Bolan, R P A
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

September 25, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony Joseph Sarro, M.D.

REDACTED

RE: License No. 086374

Dear Dr. Sarro:

Enclosed please find Order #BPMC 01-218 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect September 25, 2001.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

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Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1258
Empire State Plaza
Albany, New York 12237

Sincerely,

REDACTED

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Alexander Bateman, Esq.
Ruskin, Moscou, Evans and Faltischek, P.C.
17 0Old Country Road
Mineola, New York 11501-4366

Terry Sheehan, Esq.

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

IN THE MATTER OF ANTHONY JOSEPH SARRO, M.D.	CONSENT ORDER BPMC No. 01-218

Upon the proposed agreement of ANTHONY JOSEPH SARRO, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 9/25/01

REDACTED

WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

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

IN THE MATTER OF ANTHONY JOSEPH SARRO, M.D.	CONSENT AGREEMENT AND ORDER

ANTHONY JOSEPH SARRO, M.D., representing all statements herein made to be true, deposes and says:

That on or about September 6, 1961, I was licensed to practice as a physician in the State of New York, having been issued License No. 086374 by the New York State Education Department.

My current address is REDACTED and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with twenty-six specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I cannot successfully defend against at least one of the acts of misconduct alleged. I hereby agree to the following penalty:

> Pursuant to §230-a(2) of the Public Health law, my license to practice medicine in the State of New York shall be suspended for a period of two years with said suspension to be entirely stayed. Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of two years, subject to the terms set forth in Exhibit "B," attached hereto. I shall be

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subject to a fine in the amount of $10,000, pursuant to §230-a(7) and (9) of the Public Health Law, to be paid within 30 days of the effective date of this order.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain active registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of

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the Consent Order and will continue while the licensee possesses his/her license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the

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value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

REDACTED

DATED 9-5-01

ANTHONY JOSEPH SARRO, M.D.
RESPONDENT

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The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 9/5/01

REDACTED

ALEXANDER BATEMAN, ESQ.
Attorney for Respondent

DATE: 9/7/01

REDACTED

TERRENCE J. SHEEHAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 9/19/01

REDACTED

DENNIS J. GRAZIANO
Director
Office of Professional
Medical Conduct

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EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].

4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

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PRACTICE MONITOR

7. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.

   a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

   b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.

   c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

   d. Respondent shall maintain medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

8. Unless otherwise specified herein, the fine is payable in full within thirty (30) days of the effective date of this Order. Payments must be submitted to:

   Bureau of Accounts Management
   New York State Department of Health
   Empire State Plaza
   Corning Tower, Room 1245
   Albany, New York 12237

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

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

IN THE MATTER OF ANTHONY JOSEPH SARRO, M.D.	STATEMENT OF CHARGES

ANTHONY JOSEPH SARRO, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 6, 1961, by the issuance of license number 086374 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Between September 28, 1993 and October 16, 1996, the Respondent treated Patient A (all patients are identified in the annexed Appendix) at his office located at 8210 Avenue J, Brooklyn, New York, for upper respiratory infection and other medical conditions. Respondents care and treatment departed from accepted standards of practice in the following respects:

1. Respondent failed to obtain and note adequate histories and to perform and note adequate physical examinations.

2. Respondents inappropriately and without proper indication ordered or performed the following tests or procedures:

Exh. "A" 5111

a. Fiberoptic nasal endoscopy on May 24, 1996 and June 5, 1996.

b. Direct laryngoscopy on May 24, 1996 and June 5, 1996.

c. Surgical nasal endoscopy on October 16, 1996.

d. Bilateral maxillary sinus irrigation on May 24, 1996.

e. Cauterization of nasal turbinates on October 16, 1996.

f. Bronchoscopy on June 5, 1996.

g. Undated audiological evaluation.

3. Respondent ordered or performed the tests and procedures listed in paragraphs A(2) (a) - (g), supra, in the knowledge that they were without legitimate medical purpose.

4. Respondent sought payment from Patient A and/or Patient A's insurance carrier for the tests and procedures listed in paragraphs A (2) (a) - (g), in the knowledge that they were without legitimate medical purpose and therefore not properly compensable.

5. Respondent prepared purported "operative reports" for each of the procedures listed in paragraphs A

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(2) (a) - (f). These reports constitute sham medical records: for the most part they are form documents used over and over again with only minimal information specific to Patient A.

6. Respondent billed Patient A and/or Patient A's insurance carrier for ear, nose and throat examinations in a fraudulent manner. Instead of billing for a single comprehensive ENT examination, Respondent 'unbundled' the exam into several component parts and improperly billed for each separately.

7. Respondent failed to maintain a record for Patient A which accurately reflects the evaluation and treatment he provided, including patient complaints, history, physical examinations, diagnoses, treatment plans, rationales for treatment and insurance bills.

B. Between October 12, 1995 and January 31, 1996, the Respondent treated Patient B at his office for nasal septal perforation and other medical conditions. Respondents care and treatment departed from accepted standards of practice in the following respects:

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1. Respondent failed to obtain and note adequate histories and to perform and note adequate physical examinations.

2. Respondents inappropriately and without proper indication ordered or performed the following tests or procedures:

   a. Surgical nasal endoscopy on November 1, 1995.
   b. Fiberoptic nasal endoscopy on October 12, 1995, November 1, 1995.
   c. Diet laryngoscopy on January 31, 1996.
   d. Politzerization under local anexthesia on October 12, 1995, October 18, 1995 and November 1, 1995.
   e. Electric cautery of ulcerated areas on November 1, 1995.
   f. Sinus irrigation on October 12, 1995, October 18, 1995, November 1, 1995 and January 31, 1996.

3. Respondent performed the procedures listed in paragraphs B(2) (a) - (f), supra, in the knowledge that they were without legitimate medical purpose.

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4. Respondent sought payment from Patient B and/or Patient B's insurance carrier for the procedures listed in paragraphs B (2) (a) - (f), in the knowledge that they were without legitimate medical purpose and therefore not properly compensable.

5. Respondent prepared purported "operative reports" for each of the procedures listed in paragraphs B (2) (a) - (f). These reports constitute sham medical records: for the most part they are form documents used over and over again with only minimal information specific to Patient B.

6. Respondent billed Patient B and/or Patient B's insurance carrier for ear, nose and throat examinations in a fraudulent manner. Instead of billing for a single comprehensive ENT examination, Respondent 'unbundled' the exam into several component parts and improperly billed for each separately.

7. Respondent failed to maintain a record for Patient B which accurately reflects the evaluation and treatment he provided, including patient complaints, history, physical examinations, diagnoses, treatment plans, rationales for treatment and insurance bills.

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C. Between May 1,1991 and September 25, 1996, the Respondent treated Patient C at his office for various conditions. Respondent's care and treatment departed from accepted standards of practice in the following respects:

1. Respondent failed to obtain and note adequate histories and to perform and note adequate physical examinations.

2. Respondents inappropriately and without proper indication ordered or performed he following tests or procedures:

   a. Surgical nasal endoscopy on March 14, 1996, April 22, 1996, April 24, 1996, May 29, 1996 and September 25, 1996.
   b. Fiberoptic nasal endoscopy on October 23, 1995, October 30, 1995, June 21, 1995 and January 15, 1996.
   c. Cauterization of nasal turbinates on October 31, 1995 and January 15, 1996.
   d. Electric-cautery of bleeding ulcerated areas on March 14, 1996.
   e. Politzeration under local anesthesia on June 21, 1995, October 23, 1995, January 15, 1996 and March 14, 1996.

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f. Myringotomy on October 23, 1995, September 15, 1993 and May 29, 1996.

g. Several audiological evaluations, one dated June 21, 1995, others undated.

3. Respondent ordered or performed the tests and procedures listed in paragraphs C (2) (a) - (g), supra, in the knowledge that they were without legitimate medical purpose.

4. Respondent sought payment from Patient C and/or Patients C's insurance carrier for the procedures listed in paragraphs C (2) 9 (a) - (g), in the knowledge that they were without legitimate medical purpose and therefore not properly compensable.

5. Respondent prepared purported "operative reports" for each of the procedures listed in paragraphs C (2) (a) - (f). These reports constitute sham medical records: for the most part they are form documents used over and over again with only minimal information specific to Patient C.

6. Respondent billed Patient C and/or Patient C's insurance carrier for ear, nose and throat examinations in a fraudulent manner. Instead of

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billing for a single comprehensive ENT examination. Respondent 'unbundled' the exam into several component parts and improperly billed for each separately.

7. Respondent failed to maintain a record for patient C which accurately reflects the evaluation and treatment he provided, including patient complaints, history, physical examinations, diagnoses, treatment plans, rationales for treatment and insurance bills.

D. Between April 26, 1991 and October 30, 1996, the Respondent treated Patient D at his office for various conditions. Respondents care and treatment departed from accepted standards of practice in the following respects:

1. Respondent failed to obtain and note adequate histories and to perform and note adequate physical examinations.

2. Respondents inappropriately and without proper indication ordered or performed the following tests or procedures:

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a. Surgical nasal endoscopy on May 2, 1994, May 18, 1994, October 2, 1995, April 22, 1996 and April 29, 1996.

b. Fiberoptic nasal endoscopy on October 3, 1994.

c. Direct laryngoscopy on February 24, 1992.

d. Debridement and fulguration of intranasal lesions on May 2, 1994, October 2, 1995 and April 22, 1996.

e. Bilateral maxillary sinus irrigation on April 22, 1996.

f. Bronchoscopy on October 3, 1994.

3. Respondent performed the procedures listed in paragraphs D (2) (a) - (f), supra, in the knowledge that they were without legitimate medical purpose.

4. Respondent sought payment from Patient D and/or Patient D's insurance carrier for the procedures listed in paragraphs D (2) (a) - (f), in the knowledge that they were without legitimate medical purpose and therefore not properly compensable.

5. Respondent prepared purported "operative reports" for each of the procedures listed in paragraphs D (2) (a) - (f). These reports constitute sham medical records: for the most part they are form documents used over and

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over again with only minimal information specific to Patient D.

6. Respondent billed Patient D and/or Patient D's insurance carrier for ear, nose and throat examinations in a fraudulent manner. Instead of billing for a single comprehensive ENT examination, Respondent 'unbundled' the exam into several component parts and improperly billed for each separately.

7. Respondent failed to maintain a record for Patient D which accurately reflects the evaluation and treatment he provided, including patient complaints, history, physical examinations, diagnoses, treatment plans, rationales for treatment and insurance bills.

E. Between September 29,1994 and January 12, 1995 the Respondent treated Patient E at his office for certain medical conditions. Respondents care and treatment departed from accepted standards of practice in the following respects:

1. Respondent failed to obtain and note adequate histories and to perform and note adequate physical examinations.

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2. Respondents inappropriately and without proper indication ordered or performed the following tests or procedures:

   a. Fiberoptic nasal endoscopy on September 24, 1994.

   b. Direct laryngoscopy on September 29, 1994.

   c. Bronchoscopy on September 29, 199 and November 16, 1994.

   d. Vestibular function tests on January 12, 1995.

3. Respondent ordered or performed the tests and procedures listed in paragraphs E (2) (a) - (d), <u>supra</u>, in the knowledge that they were without legitimate medical purpose.

4. Respondent sought payment from Patient E and/or Patient E's insurance carrier for the tests and procedures listed in paragraphs E (2) (a) - (d), in the knowledge that they were without legitimate medical purpose and therefore not properly compensable.

5. Respondent prepared purported "operative reports" for each of the procedures listed in paragraphs E (2) (a) - (c). These reports constitute sham medical

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records: for the most part they are form documents used over and over again with only minimal information specific to Patient E.

6. Respondent billed Patient E and/or Patient E's insurance carrier for ear, nose and throat examinations in a fraudulent manner. Instead of billing for a single comprehensive ENT examination, Respondent 'unbundled' the exam into several component parts and improperly billed for each separately.

7. Respondent failed to maintain a record for Patient E which accurately reflects the evaluation and treatment he provided, including patient complaints, history, physical examinations, diagnoses, treatment plans, rationales for treatment and insurance bills.

F. Between November 9, 1977 and December 17, 1990, the Respondent treated Patient F at his office for various medical conditions. Respondents care and treatment departed from accepted standards of practice in the following respects:

1. Respondent failed to obtain and note adequate histories and to perform and note adequate physical examinations.

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2. Respondents inappropriately and without proper indication ordered or performed the following tests or procedures:

   a. Direct laryngoscopy on October 1, 1986, December 7, 1988, June 14, 1989, June 19, 1989, March 7, 1990 and December 17, 1990.

   b. Undated audiological evaluation.

3. Respondent ordered or performed the tests and procedurlisted in paragraphs F (2) (a) & (b), supra, in the knowledge that they were without legitimate medical purpose.

4. Respondent sought payment from Patient F and/or Patient F's insurance carrier for the tests and procedures listed in paragraphs F (2) (a) & (b), in the knowledge that they were without legitimate medical purpose and therefore not properly compensable.

5. Respondent failed to maintain a record for Patient F which accurately reflects the evaluation and treatment he provided, including patient complaints, history, physical examinations, diagnoses,

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treatment plans, rationales for treatment and insurance bills.

SPECIFICATION OPF CHARGES

FIRST THROUGH SIXTH SPECIFICATIONS
FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. A and A(3), A(4), A(5), A(6)
2. B and B(3), B(4), B(5), B(6)
3. C and C(3), C(4), C(5), C(6)
4. D and D(3), D(4), D(5), D(6)
5. E and E(3), E(4), E(5), E(6)
6. F and F(3), F(4)

SEVENTH SPECIFICATION
NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

7. A and A(1) through A(7), B and B(1) through B(7), C and C(1) through C(7), D and D (1) through D(7), E and E(1) through E(7), and F and F(1) through F(5).

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EIGHTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

8. A and A(1) through A(7), B and B(1) through B(7), C and C(1) through C(7), D and D(1) through D(7), E and E(1) through E(7), and F and F(1) through F(5).

NINTH THROUGH FOURTEENTH SPECIFICATIONS

UNWARRANTED TESTS/TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of:

9. A and A(2)
10. B and B(2)
11. C and C(2)
12. D and D(2)
13. E and E(2)
14. F and F(2)

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FIFTEENTH THROUGH TWENTIETH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

15. A and A(7)
16. B and B(7)
17. C and C(7)
18. D and D(7)
19. E and E(7)
20. F and F(5)

TWENTY-FIRST THROUGH TWENTY-SIXTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

21. A and A(3), A(4), A(5), A(6)
22. B and B(3), B(4), B(5), B(6)
23. C. and C(3), C(4), C(5),C(6)
24. D and D(3), D(4), D(5), D(6)
25. E and E(3), E(4), E(5), E(6)
26. F and F(3), F(4)

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DATED: February , 2001
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

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Effective Date: 09/06/1989
Title: Part 51 - Uniform Hearing Procedures

PART 51
UNIFORM HEARING PROCEDURES
(Statutory authority: Public Health Law Sections 12-a, 206-a, 230, 577, 2801-a, 2803-d, 2806, 2897-a, 3393, 3511; State Administrative Procedure Act, Sections 301, 401)

Sec.

51.1 Applicability
51.2 Definitions
51.3 Notice of hearing and statement of charges
51.4 Adjournment
51.5 Answer or responsive pleading
51.6 Amendment of pleadings
51.7 Service of papers
51.8 Disclosure
51.9 Hearing officer
51.10 Stipulations and consent orders
51.11 The hearing
51.12 Hearing officer's report
51.13 Filing of exceptions
51.14 Final determination and order
51.15 Waiver of rules
51.16 Administrative hearings (one-year time frame)
51.17 Disqualification for bias

Volume: A-1
Statutory Authority: Public Health Law Section 12-a, 206-a, 230, 577, 2801-a,

Effective Date:
Title: Section 51.1 - Applicability

Section 51.1 Applicability. This Part shall apply to all adjudicatory proceedings to which the Department of Health is a party brought pursuant to the Public Health Law, unless there is a specific statute or regulation to the contrary. This Part shall not apply to proceedings brought pursuant to Part 76, Public Health Administrative Tribunal, of this Title.

Volume: A-1

Effective Date:
Title: Section 51.2 - Definitions

51.2 Definitions. Whenever used in this Part:

(a) Commissioner means the Commissioner of Health of the State of New York, or his duly authorized representative.

(b) CPLR means the Civil Practice Law and Rules.

(c) Department means the Department of Health of the State of New York

(d) Hearing officer means the person duly designated for the purpose of conducting or participating in a hearing pursuant to the Public Health Law, including an administrative officer or an administrative law judge assigned by the department to the hearing

(e) Party means the department and all persons designated as petitioner, respondent, or intervenor in any adjudicatory proceeding subject to this Part

(f) Report means the hearing officer's summary of the hearing record, including his findings of fact, conclusions and recommendation or the findings, conclusions and recommendation of the hearing committee or hearing panel pursuant to Public Health Law, section 230

Volume: A-1

Effective Date
Title: Section 51.3 - Notice of hearing and statement of charges

51.3 Notice of hearing and statement of charges. (a) The notice of hearing shall contain a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the statutes and regulations violated, if any, and a short and plain statement of the matters asserted, or at issue, and/or a statement of charges

(b) The notice of hearing shall specify the time, place and date for a hearing

(c) Service of the notice of hearing and statement of charges, if any, shall be served at least 15 days prior to the date of the hearing and shall be by certified or registered mail, or by service consistent with article 3 of the CPLR. Where service is by mail, service shall be deemed complete three days after mailing.

Volume: A-1

Effective Date
Title: Section 51.4 - Adjournment

51.4 Adjournment. A request for an adjournment of the hearing should be in writing and submitted to the hearing officer and other parties prior to the hearing. Adjournments shall be granted only by the hearing officer, and only after the hearing officer has consulted with both parties. When granted, adjournments should be to a specified time, day and place

Volume: A-1

Effective Date
Title: Section 51.5 - Answer or responsive pleading

51.5 Answer or responsive pleading. (a) A party may serve on the department an answer or responsive pleading, signed by the party or the party's attorney. The answer or responsive pleading shall specify

which allegations are admitted, which allegations are denied and which allegations a party has insufficient information upon which to form an opinion.

(b) The answer or responsive pleading shall be served no later than three days before the initial hearing date.

(c) An answer or responsive pleading is required if there are affirmative defenses.

Volume: A-1

Effective Date: 02/02/1994
Title: Section 51.6 - Amendment of pleadings

51.6 Amendment of pleadings. Any party may amend or supplement a pleading at any time prior to the submission of the hearing officer's report to the commissioner, or to the appropriate board or council, by leave of the hearing officer, if there is no substantial prejudice to any other party. Any party may amend or supplement a pleading at any time prior to a hearing committee's final determination and order pursuant to Public Health Law, section 230(10), by leave of the hearing officer, if there is no substantial prejudice to any other party.

Volume: A-1

Effective Date:
Title: Section 51.7 - Service of papers

51.7 Service of papers. All notices and papers connected with a hearing, other than the notice of hearing and statement of charges, if any, may be served by ordinary mail. Except where otherwise provided, service by mail shall be deemed complete three days after mailing.

Volume: A-1

Effective Date:
Title: Section 51.8 - Disclosure

51.8 Disclosure. (a) Except as provided in subdivision (b) of this section or as otherwise agreed to by all parties, there shall be no disclosure, including but not limited to bills of particulars, exchanges of documents and witness lists, depositions, interrogatories, discovery and requests for documents. A hearing officer may not require disclosure. When the parties agree to any form of disclosure, the hearing officer shall ensure that all parties proceed in accordance with the agreement of the parties.

(b) (1) If the department in a notice of hearing states its intent to seek, or states the possibility of, the revocation of a license or permit, upon the service of such notice, any party to the proceeding may demand in writing from any other party disclosure of any of the following which such other party intends to introduce at the hearing:

(i) names of witnesses; however, a summary of the testimony to be given by the witnesses shall not be required to be disclosed;

(ii) a list of documentary evidence;

(iii) photocopies of documentary evidence listed in subparagraph (ii) of this paragraph in the possession of the party upon whom the demand has been made; and

(iv) a brief description of physical or other evidence which cannot be photocopied.

(2) The demand for disclosure shall be made at least 10 days prior to the first scheduled date of hearing. At least seven days prior to the first scheduled date of hearing, the party upon whom the demand has been made shall make the disclosure described in subparagraphs (1)(i) through (iv) of this subdivision or a statement that the party does not have anything to disclose. If, after such disclosure or statement, a party determines to present witnesses or evidence not previously disclosed, the party shall disclose as soon as practicable.

(3) Upon application of any party, the hearing officer:

(i) upon good cause shown, may allow demands and responses within time periods other than those described in paragraph (2) of this subdivision;

(ii) shall allow a party not to disclose information or material protected by statutory or case law from disclosure, including information and material protected because of privilege or confidentiality;

(iii) upon good cause shown, may limit, condition or regulate the use by the party to whom disclosure is made of information or material disclosed; and

(iv) may preclude a party that unreasonably fails to respond to a timely demand for disclosure or to supplement its disclosure from introducing evidence or witnesses not disclosed.

Volume: A-1

Effective Date:
Title: Section 51.9 - Hearing officer

51.9 Hearing officer. (a) No hearing officer shall preside who has any bias with respect to the matter involved in the proceeding. Any party may file with the department a request, together with a supporting affidavit, that a hearing officer be removed on the basis of personal bias or other good cause.

(b) The hearing officer shall conduct the hearing in a fair and impartial manner.

(c) The hearing officer shall have the power to:

(1) rule upon requests, including all requests for adjournments;

(2) set the time and place of hearing;

(3) administer oaths and affirmations;

(4) issue subpoenas requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers and other evidence;

(5) summon and examine witnesses, including the authority to direct a party, without necessity of subpoena, to appear and to testify;

(6) admit or exclude evidence,

(7) limit the number of times any witness may testify, repetitious examination or cross-examination, and the amount of corroborative or cumulative testimony;

(8) hear argument on facts or law;

(9) order the parties to appear for a prehearing conference to consider matters which may simplify the issues or expedite the proceeding;

(10) order that opening statements be made; and

(11) do all acts and take all measures necessary, but not otherwise prohibited by this Part, for the maintenance of order and the efficient conduct of the hearing.

(d) The hearing officer shall not have the power to:

(1) remove testimony from the transcript by deletion, expungement or otherwise; and

(2) dismiss the charges unless otherwise authorized by designation.

(e) Upon being notified that a hearing officer declines or fails to serve, or in the case of death, resignation or removal of the hearing officer, or upon the initiative of the commissioner, or the appropriate board or council, a successor hearing officer shall be designated to continue the proceeding.

(f) The designation of a hearing officer shall be in writing and filed with the department.

Volume: A-1

Effective Date: 01/15/92
Title: Section 51.10 - Stipulations and consent orders

51.10 Stipulations and consent orders. (a) At any time prior to issuance of the final order or determination, parties may enter into a stipulation for the resolution of any or all issues.

(b) The commissioner, or the appropriate board or council, may issue a consent order upon agreement or stipulation of the parties. A consent order shall have the same force and effect as an order issued after a hearing.

(c) In matters governed by Public Health Law, sections 230, 230-B and 230-C, a licensee, who is under investigation or against whom a determination has been made that a hearing is warranted, as a condition for the satisfaction of all charges and potential charges, shall admit guilt to at least one of the acts of misconduct alleged, or shall agree not to contest the allegations, or shall assert that he or she cannot successfully defend against at least one of the acts of misconduct alleged, and shall either surrender his or her license or agree to a penalty. The signators to such an agreement shall be the licensee, his or her counsel, if the licensee is represented, the attorney for the department, the director of the office of professional medical conduct and the chairperson of the state board for professional medical conduct. The chairperson of the state board for professional medical conduct shall issue a surrender or consent order based upon said agreement. The order shall have the same force and effect as an order issued after a hearing.

Volume: A-1

Effective Date: 02/02/94
Title: Section 51.11 - The hearing

51.11 The hearing. (a) Appearances.

(1) A party may appear in person or by an attorney. If a party appears by an attorney, service of papers shall be made upon the attorney.

(2) Any person appearing on behalf of a party in a representative capacity may be required to show his authority to act in such capacity.

(3) If a party fails to appear at the hearing, issues on which the absent party has the burden of proof may be resolved against that party.

(4) At any time before a report is submitted to the commissioner, or to the appropriate board or council, the hearing officer may open a default or relieve any party of the consequences of any default upon good cause shown.

(b) Consolidation and severance. (1) In proceedings which involve common questions of fact, the hearing officer, upon his own initiative or upon motion of any party, may order a consolidation of actions or a joint hearing of any or all issues to avoid unnecessary delay and cost.

(2) The hearing officer, to avoid prejudice or inconvenience, may order a severance of the hearing and hear separately any issue in the proceeding.

(c) Intervention. (1) At any time after the institution of a proceeding, the hearing officer may, upon a verified petition and for good cause shown, and upon notice to the parties, permit a person to intervene as a party, except in proceedings brought pursuant to Public Health Law, section 230.

(2) The petition of any person desiring to intervene as a party shall state with precision and particularity:

(i) the petitioner's interest in the matter at issue;

(ii) the nature of the evidence petitioner intends to present and the names of witnesses, if any;

(iii) the nature of the argument petitioner intends to make; and

(iv) any other reason that petitioner should be allowed to intervene.

(d) Conduct of hearing and evidence. (1) Each witness shall be sworn or given an affirmation.

(2) The rules of evidence need not be observed.

(3) Each party shall have the right to present evidence and to cross-examine witnesses.

(4) Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the department.

(5) All evidence, including records, documents and memoranda in the possession of the department of which it desires to avail itself, shall be offered and made a part of the record. All such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties

before being received in evidence.

(6) The department has the burden of proof and of going forward in all enforcement cases. The petitioner/applicant has the burden of proof and of going forward in all other cases.

(7) In administration proceedings relating to violation of Public Health Law, section 2803-d, the hearing officer may not compel the disclosure of the identity of the person who made the report or any person who provided information in an investigation of any such report.

(8) Complaints relating to matters governed by Public Health Law, section 230 may not be introduced into evidence by either party and their production may not be required by the hearing officer even if the complainant is a witness.

(9) In matters governed by Public Health Law, section 230, a hearing may proceed if at least two members of the hearing committee are present. At the conclusion of the hearing each member shall affirm that he or she has read and considered evidence introduced at and transcripts of any hearing days at which he or she was not present.

(10) Claims that an administrative hearing has been unreasonably delayed shall be raised only pursuant to this section and claims of unreasonable delay not permitted by this section shall not be entertained in a hearing.

(i) Claims of unreasonable delay occurring after hearing is requested or noticed.

Any claim that a hearing has been delayed unreasonably shall be treated as an affirmative defense pursuant to section 51.5 or otherwise as part of the claimant's case and shall be argued as part of the claimant's case. The burden of proving and the burden of going forward on the issue of unreasonable delay shall be on the claimant.

(a) In reviewing a claim of unreasonable delay, the hearing officer shall first calculate the time period that has elapsed between the date the hearing was requested or noticed, whichever is earlier, and the first day of hearing (the "time period"). For purposes of this section, the time period for cases brought pursuant to Public Health Law Section 2803-d or 230, or Subpart 60-1 of this Title, shall be from the date the hearing was noticed to the first day of hearing. (b) If the time period is one year or less, the claim of unreasonable delay shall be denied.

(c) If the time period is more than one year, the claimant shall then have the burden of showing that the claimant has been handicapped significantly and irreparably in mounting a case or defense by the time period. A mere assertion of handicap shall not suffice.

(d) If the claimant meets such burden, the hearing officer must then determine whether the time period is unreasonable under the circumstances. In making that determination, the hearing officer shall weigh at least the following factors:

(1) whether there is a causal relationship between the conduct of the Department and the time period, and whether the conduct of the claimant was responsible in whole or in part for the time period;

(2) the public policy sought to be effected through the administrative action which is the subject of the administrative hearing;

(3) the availability of Department resources to pursue the case consistent with other Department responsibilities.

(e) The hearing officer shall include in the report to the decision-maker any findings, conclusions and recommendations with respect to unreasonable delay. The report shall also include findings, conclusions and recommendations that will allow the decision-maker to dispose of the case if the decision-maker does not follow the recommendation for dismissal on the basis of unreasonable delay.

(ii) Claims of unreasonable delay occurring before hearing is requested or noticed.

(a) Claimant may make a record in connection with a claim of an unreasonable delay by the department occurring prior to a request for, or notice of, a hearing that has resulted in substantial prejudice to the claimant's defense due to the passage of time. The department may make a record in opposition to such a claim. A separate hearing on this issue shall not be provided.

(b) Neither a hearing officer nor, in a case of alleged professional misconduct, a hearing committee, shall consider, sustain or reject a claim of unreasonable delay occurring before a hearing is requested or noticed. After a final determination has been rendered, in the event that such determination is adverse to the claimant, and the claimant wishes to pursue the claim of an unreasonable delay occurring prior to a hearing request or notice, the claimant may do so in a proceeding pursuant to Article 78 of the CPLR.

(e) Record. (1) A verbatim record of the proceedings shall be made by whatever means the department deems appropriate.

(2) The record of the hearing shall include: the notice of hearing, statement of charges, if any, answer and any other responsive pleadings; motions and requests submitted, and rulings thereon; the transcript or recording of the testimony taken at the hearing; exhibits; stipulations, if any; a statement of matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; briefs or objections as may have been submitted and filed in connection with the hearing and any decision, determination, opinion, order or report rendered.

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Effective Date: 01/15/92
Title: Section 51.12 - Hearing officer's report

51.12 Hearing officer's report. For matters governed by Public Health Law section 230, 230-a and 230-b, the hearing officer shall submit the hearing panel's signed final report not more than fifty-two (52) days after the last day of hearing if service will be effectuated by mail and not more than fifty-eight (58) days after the last day of hearing if service will be effectuated personally. In all other matters, within 60 days of the close of the records, including receipt of the transcript, if any, the hearing officer should prepare his report and submit it to the commissioner or to the appropriate board or council, and to all parties.

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Effective Date: 09/06/89
Title: Section 51.13 - Filing of exceptions

51.13 Filing of exceptions. (a) Within 30 days of the date a copy of the report of the hearing officer and proposed order or in hearings governed by Public Health Law section 230, within 15 days of the date a report of the hearing committee and proposed recommendation is sent to the parties, any party may submit exceptions to the report and order or recommendation to the Supervising Administrative Law Judge.

(b) The exceptions may include:

(1) the particular findings of fact, conclusions of law, or disposition with which the party disagrees, the reasons for disagreement and a substitute finding, conclusion or disposition;

(2) general comments on the suitability of the report and order or recommendation; and

(3) an alternative proposed order or recommendation for consideration and adoption by the Commissioner, his designee, or other decision-maker.

(c) The party shall send a copy of its exceptions to all other parties or their attorneys and the hearing officer.

(d) The opportunity to submit exceptions may be waived by such party.

(e) On notice to all parties, the party may request the Supervising Administrative Law Judge to extend the exception period. The Supervising Administrative Law Judge shall only address a request for an extension that has been made prior to the expiration of the exception period and after giving all other parties an opportunity to state their position on the request. The exception period may be extended by the Supervising Administrative Law Judge at the request of either party, for the good cause shown, and on notice to both parties. Extensions of time shall not be granted to allow a party to respond to exceptions already filed by another party.

(f) All exceptions shall be submitted to the commissioner, his designee, or other decision-maker with the record of the hearing.

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Effective Date: 09/06/89
Title: Section 51.14 - Final determination and order

51.14 Final determination and order. (a) After receipt of the hearing officer's report, the commissioner, or the appropriate board or council, shall make a final determination.

(b) The final determination shall be embodied in a written order which shall contain findings of fact and conclusions of law or reasons for the final determination.

(c) A copy of the order shall be served upon the parties.

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Effective Date: 09/06/89
Title: Section 51.15 - Waiver of rules

51.15 Waiver of rules. Any of the foregoing rules may be waived by agreement of the parties or, if a hearing has convened, by agreement of the parties and with consent of the hearing officer

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Effective Date: 09/06/89
Title: Section 51.16 - Administrative hearings (one-year time frame)

51.16 Administrative hearings (one-year time frame). For hearings requested by applicants proposed for disapproval for establishment pursuant to Public Health Law, section 2801-a(2), or for construction pursuant to Public Health Law, section 2802(5), a notice of hearing shall be issued within 365 days of the receipt by the department of the written request for hearing. For hearings requested by applicants seeking increases in reimbursement rates pursuant to Part 86 of this Title, a notice of hearing shall be issued within 365 days of the rate review officer's determination that there are issues of fact which entitle the applicant to a hearing. Failure to comply with this section shall not affect the validity of the action taken

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Effective Date: 09/06/89
Title: Section 51.17 - Disqualification for bias

Section 51.17 Disqualification for bias. (a) A hearing officer and, in hearings governed by Public Health Law section 230, a committee member, shall be disqualified for bias. For purposes of this section, bias shall exist only when there is an expectation of pecuniary or other personal benefit from a particular outcome of the case or when there is a substantial likelihood that the outcome of the case will be affected by a person's prior knowledge of the case, prior acquaintance with the parties, witnesses, representatives, or other participants in the hearing, or other predisposition with regard to the case. The appearance of impropriety shall not constitute bias and shall not be a grounds for disqualification. Hearing officers and committee members are presumed to be free from bias.

(b) A hearing officer or committee member may disqualify himself/herself for bias on his/her own motion. A party seeking disqualification for bias has the burden of demonstrating bias. The party seeking disqualification shall submit to the hearing officer an affidavit pursuant to SAPA section 303 setting forth the facts establishing bias. Mere allegations of bias shall be insufficient to establish bias

(c) The hearing officer shall rule on the request for disqualification

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SECURITY NOTICE TO THE RESPONDENT

The proceeding will be held in a secure building with restricted access. Only individuals whose names are on a list of authorized visitors for the day will be admitted to the building

No individual's name will be placed on the list of authorized visitors unless written notice of that individual's name is provided by the respondent or the respondent's attorney to one of the Department offices listed below.

The written notice may be sent via facsimile transmission, or any form of mail, but must be received by the Department **no less than two days prior to the date** of the proceeding. The notice must be on the letterhead of the respondent or the respondent's attorney, must be signed by the respondent or the respondent's attorney, and must include the following information:

Respondent's Name__________________Date of Proceeding________

Name of person to be admitted____________________________________

Status of person to be admitted__________________________________
(Respondent, Attorney, Member of Law Firm, Witness, etc.)

____
Signature (of respondent or respondent's attorney)

This written notice must be sent to:

New York State Health Department
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor South
Troy, NY 12180
Fax: 518-402-0751