



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

January 9, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Denise Lepicier, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Suite 601
New York, New York 10001

Martin Geduldig, Esq.
400 South Oyster Bay Rd. - Suite 304
Hicksville, New York 11801

Amir Borzouye, M.D.

REDACTED

RE: In the Matter of Amir Borzouye, M.D.

Dear Ms. Lepicier, Mr. Geduldig and Dr. Borzouye:

Enclosed please find the Determination and Order (No. BPMC-98-7) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 penalties **other than suspension or revocation** 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
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

**Parties will be notified by mail of the Administrative Review Board's
Determination and Order.**

Sincerely,

REDACTED

**Tyrone T. Butler, Director
Bureau of Adjudication**

**TTB:crc
Enclosure**

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

COPY

**IN THE MATTER
OF
AMIR BORZOUYE, M.D.**

DETERMINATION

AND

ORDER

BPMC-98-7

SHARON KURITZKY, M.D., Chairperson, **STEPHEN A GETTINGER, M.D.** and **DANIEL W. MORRISSEY, O.P.**, duly designated members of the State Board for Professional Medical Conduct appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY ARMON, ESQ.**, served as Administrative Officer for the Hearing Committee. After consideration of the entire record, the Hearing Committee submits this Determination.

SUMMARY OF PROCEEDINGS

Notice of Hearing and Statement of Charges:	September 19, 1997
Date of Hearing:	November 13, 1997
Department of Health appeared by:	Henry M. Greenberg, General Counsel NYS Department of Health BY: Denise Lepicier, Esq. NYS Department of Health Corning Tower Albany, New York 12237
Respondent :	No appearance
Witnesses for the Department of Health:	None
Witnesses for the Respondent:	None
Deliberations held:	November 13, 1997

Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. All Hearing Committee findings were unanimous unless otherwise specified.

NOTE: Petitioner's Exhibits are designated by Numbers.
 Respondent's exhibits are designated by Letters.
 T = Transcript

A copy of the Statement of Charges (Ex. 1) is attached to this Determination and Order as Appendix I.

LEGAL ISSUES

The Department provided evidence of the attempts made to personally serve Respondent with the Notice of Hearing and Statement of Charges related to this proceeding. Three unsuccessful attempts were made at his place of residence. Three additional attempts were made without success at his place of business. In accordance with Public Health Law Section 230(10)(d), copies of the papers were sent by certified mail to both addresses and a signed return receipt was subsequently received. It was determined that the Department had properly obtained jurisdiction over Respondent for this matter to proceed.

On or about October 28, 1997, the Administrative Law Judge telephoned Respondent's place of business and left a message requesting that he contact the Judge to discuss this proceeding. On November 7, 1997, Martin Geduldig, Esq. telephoned the Judge and indicated that he represented the Respondent in this matter. Mr. Geduldig requested an adjournment of this proceeding based on his assertions that he had only recently learned that it had been scheduled for November 13, 1997 and that he had not had time to meet with Respondent to discuss the

case. Pursuant to Public Health Law Section 230 (10)(f), a telephone conference call was scheduled for November 12, 1997 to address the adjournment request. The conference call and time was requested and agreed to by Mr. Geduldig and all Committee members were present. Mr. Geduldig was unable to participate in the conference call at the appointed hour and the Committee determined to deny the request and to proceed as scheduled. This decision was reaffirmed during the proceeding following the receipt of written arguments from Respondent's counsel which were reviewed by the Committee and which were received in evidence as Exhibit A.

The decision to deny the request for an adjournment was based on evidence that Respondent clearly had been aware of the pendency of this matter for some time. Exhibit 10 was a letter dated September 2, 1997 which accompanied a copy of Informational Charges sent to Respondent in which it is requested that Respondent have his counsel contact the Department's counsel to address scheduling this hearing. The Affidavit from the process server who attempted to personally serve him indicated that Respondent may have been avoiding service. The Committee did not feel that Respondent should be rewarded for failing to notify his representative in a timely manner of this proceeding and determined that good cause had not been shown to grant the adjournment request.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on October 6, 1971 by the issuance of license number 110446 by the New York State Education Department. (Ex.3)
2. On or about October 10, 1995, Respondent submitted an application for reappointment to the Interfaith Medical Center, 555 Prospect Place, Brooklyn, N.Y., in which he represented that:

a. no "sanctions of any kind (are/were) imposed or pending...by any...regulatory authority in the past two years", and that;

b. he had not been charged with a criminal offense in the past two years.

(Ex. 6)

3. By a letter from the New York State Department of Social Services dated August 16, 1990, Respondent was advised that it had been determined to exclude him from the Medical Assistance Program for a period of five years because of his having engaged in unacceptable practices and having received overpayments. (Ex. 4)

4. On or about March 2, 1995, Respondent was charged with one count of Grand Larceny in the First Degree. On or about October 3, 1996, Respondent was found guilty, after a jury trial, of Grand Larceny in the Second Degree in that he wrongfully took, obtained and withheld property valued in the range between \$50,000 and \$1 million from the New York State Medical Assistance Program. (Ex. 5,7,8)

5. The Department made several attempts to personally serve Respondent with the Notice of Hearing and Statement of Charges related to this proceeding. Attempts were made to personally serve him at his residence at 19 Quail Run, Old Westbury, N.Y. on September 23, September 26 and October 4, 1997. On each of those occasions, Respondent was not at home. Attempts to personally serve Respondent at his place of business, Queens Radiology, 112-47 Queens Boulevard, Forest Hills, N.Y. on October 22 and October 23, 1997 were not successful. Pursuant to Public Health Law Section 230 (10)(d), copies of the Notice of Hearing and Statement of Charges were sent by certified mail, return receipt, to the Respondent on or about October 24, 1997. A receipt for the delivery of those documents was signed on October 27, 1997. (Ex. 1, 2)

CONCLUSIONS OF LAW and DISCUSSION

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concluded that all Factual Allegations should be **SUSTAINED** and that, based on the sustained Factual Allegations, all Specifications of professional misconduct should be **SUSTAINED**.

Respondent was charged with multiple Specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of actions which constitute professional misconduct, but does not provide definitions of such categories of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for certain types of professional misconduct.

The following definition was utilized by the Hearing Committee during its deliberations:

Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact made in connection with the practice of medicine.

The Committee relied upon this definition in considering the Specifications of professional misconduct.

Factual Allegation A. 1. was sustained because the period of Respondent's exclusion from the Medical Assistance Program was within two years of the application for reappointment to the Interfaith Medical Center. Factual Allegation A. 2. was sustained because he had been charged with the crime of Grand Larceny in the first degree within two years of such application for reappointment.

The Committee sustained Factual Allegation B and concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Respondent had been found guilty and was convicted of committing an act constituting a crime under New York state law. The Committee therefore determined to sustain the Third Specification.

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 be revoked. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent demonstrated a lack of integrity by multiple instances of misrepresenting his qualifications. He was excluded from participation in the Medical Assistance Program and was subsequently convicted of Second Degree Grand Larceny for his wrongful receipt of overpayments. He then knowingly lied about those sanctions on his application for reappointment to the Interfaith Medical Center. Respondent further attempted to avoid service of the notice of this proceeding to escape imposition of a sanction on his license to practice medicine. The Committee felt that these examples of absences of character not only justified, but also mandated, imposition of the most severe penalty available and concluded that a revocation of his medical license was the only appropriate penalty under the circumstances of this case.

ORDER

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

1. The First, Second and Third Specifications of professional misconduct are **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**; and
3. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

DATED: Albany, New York

11/12, 1998

REDACTED

SHARON KURITZKY, M.D. Chairperson

**STEPHEN A. GETTINGER, M.D.
DANIEL W. MORRISSEY, O.P.**

**TO: Denise Lepicier, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza- Suite 601
New York, New York 10001**

Amir Borzouye, M.D.

REDACTED

**Martin Geduldig, Esq.
400 South Oyster Bay Road- Suite 304
Hicksville, New York 11801**

(14)

APPENDIX I

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

IN THE MATTER
OF
AMIR BORZOUYE, M.D.

NOTICE
OF
HEARING

TO: Amir Borzouye, M.D.

REDACTED

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1997) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1997). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on November 13, 1991, at 10:00 a.m., at the Offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York, and at such other adjourned dates, times and places as the committee may direct.

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. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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. TYRONE BUTLER, DIRECTOR, BUREAU OF

ADJUDICATION, (henceforth "Bureau of Adjudication"), (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.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. 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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1997) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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 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 OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp.
1997). YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
September 19, 1997

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Denise Lepicier
Attorney
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(914) 763-5717

**IN THE MATTER
OF
AMIR BORZOUYE, M.D.**

**STATEMENT
OF
CHARGES**

AMIR BORZOUYE, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 6, 1971, by the issuance of license number 110446 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From on or about August 16, 1990, to August 31, 1995, Respondent was excluded from participation in the New York State Medical Assistance Program by the New York State Department of Social Services for a period of five years and ordered to make restitution in the amount of \$303,809 because the Department of Social Services "determined that [the Respondent had] engaged in unacceptable practices and received overpayments as defined in the Department's regulations." On or about March 2, 1995, Respondent was charged in the Supreme Court of the State of New York, County of Queens, in Indictment number 1074/95 with one count of Grand Larceny in the First Degree in violation of Section 155.42 of the Penal Law.
1. On or about October 10, 1995, Respondent willfully submitted an application for reappointment to the Interfaith Medical Center in which he falsely represented that no "sanctions of any kind [are/were] imposed or pending . . . by any . . . regulatory authority in the past two years."
 - a. Respondent knowingly made this false

representation with the intention to deceive.

2. On or about October 10, 1995, Respondent willfully submitted an application for reappointment to the Interfaith Medical Center in which he falsely represented that he had not been charged with a criminal offense in the past two years.

a. Respondent knowingly made this false representation with the intention to deceive.

B. On or about March 2, 1995, Respondent was charged in the New York State Supreme Court, County of Queens, with one count of Grand Larceny in the First Degree in that he wrongfully took, obtained and withheld property valued in excess of one million dollars from the New York State Medical Assistance Program. On or about October 3, 1996, Respondent was found guilty after a jury trial of Grand Larceny in the Second Degree.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(2)(McKinney Supp. 1997) by practicing the profession of medicine fraudulently, as alleged in the facts of:

1. Paragraphs A and A1a and/or A2a.

SECOND SPECIFICATION

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21)(McKinney Supp. 1997) by willfully making or filing a false report, as alleged in the facts of:

2. Paragraph A and A1 and/or A2.

THIRD SPECIFICATION

CRIMINAL CONVICTION (N.Y.S.)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(i)(McKinney Supp. 1997) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

3. Paragraph B.

DATED: September 19, 1997
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct