



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

Public

April 4, 2006

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jeffrey S. Schwartz, M.D.  
REDACTED

David E. Richman, Esq.  
Brian Schlosser, Esq.  
Rivkin Radler LLP  
960 EAB Plaza  
Uniondale, New York 11556

Robert Bogan, Esq.  
Joel Ablove, Esq.  
NYS Department of Health  
Office of Professional Medical  
Conduct  
433 River Street – Suite 303  
Troy, New York 12180-2299

**RE: In the Matter of Jeffrey S. Schwartz, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 06-068) 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 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

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:djh

Enclosure

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

**COPY**

BPMC NO. 06-068

**IN THE MATTER**

**OF**

**JEFFREY S. SCHWARTZ, M.D.,**

**Respondent**

**DETERMINATION**

**AND**

**ORDER**

A Notice of Hearing and Amended Statement of Charges, dated October 13, 2002, were served upon the Respondent, **Jeffrey S. Schwartz, M.D.** **CHARLOTTE S. BUCHANAN (Chair), JAGDISH M. TRIVEDI, M.D.** and **ARTHUR S. HENGERER, M.D.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Robert Bogan, Esq. and Joel Ablove, Esq. The Respondent appeared by Rivkin Radler LLP, David E. Richman, Esq. and Brian Schlosser, Esq. of counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

**PROCEDURAL HISTORY**

Dates of Hearing:

December 5, 2005  
December 12, 2005  
December 13, 2005

Date of Deliberations:

January 23, 2006

**STATEMENT OF CASE**

The Amended Statement of Charges alleged the Respondent violated six categories of professional misconduct, namely, fraudulent practice of medicine, incompetence on more than one occasion, moral unfitness in the practice of medicine, failure to maintain accurate records, having been convicted of a crime, and ordering excessive tests or treatments not warranted by the condition of the patient.

A copy of the Amended Statement of Charges is attached to this Determination and Order and made a part thereof as Appendix I.

## **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the evidence presented in this matter. All Findings and Conclusions herein are the unanimous determination of the Committee (except as noted by \*). Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. All Findings of Fact made by the Committee were established by at least a preponderance of the evidence. Having heard testimony and considered evidence presented by the Department of Health and the Respondent respectively, the Committee hereby makes the following findings of fact.

## **GENERAL FINDINGS**

1. Jeffrey S. Schwartz, M.D., (hereinafter " Respondent"), was authorized to practice medicine in New York State on or about October 29, 1982, by the issuance of a three year limited license number 152188 by the New York State Education Department. (Exs.3& 6)

2. On or about January 8, 1998, the Respondent pled guilty, was convicted of grand larceny, 3<sup>rd</sup> Degree, a Class D felony, and was sentenced on or about February 15, 2001, to five years probation, ordered to make restitution to the amount of \$1,281,854.00, plus a 5% surcharge, a \$150.00 surcharge and an assessment of a \$5.00 Crime Victims Assistance fee (Exs. 7 & 8).

3. The Respondent worked at an ambulatory care clinic approximately 2 days a week for 2 years providing medical services but did not prepare the billing for these services. While employed at this clinic, the Respondent followed the protocol of the clinic where a technician performed the Neuroconductive Velocity (hereafter NCV) studies and he reviewed and adopted these NCV studies. The Respondent had a responsibility to make sure bills were appropriate for his practice and he did not fulfill his responsibilities. (T. 448-450; Exs. 16-19, 20A, 21A, 22, 23A and 31)

#### **PATIENT A**

4. On or about June 10, 2003, the Respondent prepared an initial comprehensive examination for Patient A in which he recorded that he performed Electromyograph (hereinafter EMG) and NCV studies to the upper and lower extremities to rule out radiculopathy. The NCV studies on Patient A were actually

performed by someone else, yet the Respondent signed the medical record. (T. 248, 284-285, 287, 355, 360-361, 363-366, 627; Exs. 19 & 31)

5. \* On or about June 10, 2003, EMG studies were performed on Patient A. (T. 498, 544-545, 565; Ex 19)

6. On or about June 10, 2003, a global billing statement was prepared and submitted to American Home Insurance Company based on the medical record prepared by the Respondent relating to Patient A in the amount of \$1,961.94, for the upper extremities and \$1,749.00 for the lower extremities. The Respondent did not perform the NCV studies on this patient. (T. 264-267, 274-276, 284-285; Exs. 19, 23A & 31).

7. The number of studies conducted by the Respondent on Patient A was excessive. (T. 272, 274, 310, 389, 414; Ex. 19).

### **PATIENT B**

8. On or about July 8, 2003, the Respondent prepared an initial comprehensive examination for Patient B in which he recorded that he performed EMG and NCV studies to the upper and lower extremities to rule out radiculopathy. The NCV studies on Patient B were actually performed by someone else, yet the Respondent signed the medical record. (T. 248, 284-285, 287, 355, 360-361, 363-366, 627; Exs. 16 & 31).



9. On or about July 8, 2003, EMG studies were performed on Patient B. (T. 544-545, 555; Ex. 16).

10. On or about July 8, 2003, a global billing statement was prepared and submitted to AIU Insurance Company (hereinafter AIU), based on the medical record prepared by the Respondent relating to Patient B in the amount of \$1,961.94 for the upper extremities and \$1,749.00 for the lower extremities. (T. 264-267, 274-276, 284-288; Exs. 16, 20A & 31).

11. The number of studies conducted by the Respondent on Patient B was excessive. (T. 237, 245, 255, 258, 374, 389; Ex. 16).

### **PATIENT C**

12. On or about July 8, 2003, the Respondent prepared an initial comprehensive examination for Patient C, in which he recorded that he performed EMG and NCV studies to the upper and lower extremities to rule out radiculopathy. The NCV studies on Patient C were actually performed by someone else, yet the Respondent signed the medical record. (T. 248, 261-262, 284-285; Exs. 17 & 31).

13. On or about July 8, 2003, EMG studies were performed on Patient C. (T. 544-545, 558; Ex. 17).

14. On or about July 8, 2003, a global billing statement was prepared and submitted to AIU based on the medical record prepared by the Respondent, relating to Patient C, in the amount of \$1,961.94 for the upper extremities and \$1,749.00 for the lower extremities. The Respondent did not perform the NCV studies on this patient. (T. 264-267, 274-276, 284-285; Exs. 17, 21A & 31).

15. The number of studies conducted by the Respondent on Patient C was excessive. (T. 260-261, 264, 268; Ex. 17).

**PATIENT D:**

16. On or about July 22, 2003, the Respondent prepared an initial Comprehensive Examination for Patient D, in which he recorded that he performed EMG and NCV studies to the upper and lower extremities to rule out radiculopathy. The NCV studies on Patient D were actually performed by someone else, yet the Respondent signed the medical record. (T.248, 284-285, 287, 355, 360-361, 363-366, 627; Exs. 18 & 31).

17. On or about July 22, 2003, EMG studies were performed on Patient D. (T. 544-546, 548-549; Ex. 18).

18. On or about July 22, 2003, a global billing statement was prepared and submitted to the AIU based on the medical record prepared by the Respondent relating to Patient D in the amount of \$1,961.94 for the upper extremities and

\$1,749.00 for the lower extremities. The Respondent did not perform the NCV studies on this patient. (T. 264-267, 274-276, 284-285; Exs. 18, 22 & 31).

19. The number of studies conducted by the Respondent on Patient D was excessive. (T. 279; Exs. 18 & 22).

### CONCLUSIONS

The following conclusions were made pursuant to the Findings of Fact listed above. The Committee concluded that the following Factual Allegations were proven by a preponderance of the evidence (the paragraph noted refer to those set forth in the Statement of Charges, Factual Allegations). The citations in parentheses refer to the Findings of Fact (supra), which support the Committee's conclusion:

**Paragraph A.:** (2);

**Paragraph B.:** (4);

**Paragraph C.:** (4);

**Paragraph E.:** (6); however, the amount billed for the upper extremities was \$1,961.94, not \$1,964.94 as set forth in the Amended Statement of Charges;

**Paragraph F.:** (6); however, the amount billed for the upper extremities was \$1,961.94, not \$1,964.94 as set forth in the Amended Statement of Charges;

**Paragraph H.:** (7);

**Paragraph I.:** (8);

**Paragraph J.:** (8);

**Paragraph L.:** (10); however, the amount billed for the upper extremities was \$1,961.94, not \$1,964.94, as set forth in the Amended Statement of Charges;

**Paragraph M.:** (10);

**Paragraph O.:** (11);

**Paragraph P.:** (12);

**Paragraph Q.:** (12);

**Paragraph S.:** (14); however, the amount billed for the upper extremities was \$1,961.94, not \$1,964.94 as set forth in the Amended Statement of Charges;

**Paragraph T.:** (14);

**Paragraph U.:** (15);

**Paragraph V.:** (16);

**Paragraph W.:** (16);

**Paragraph Y.:** (18); however, the amount billed for the upper extremities was \$1,961.94, not \$1,964.94, as set forth in the Amended Statement of Charges;

**Paragraph Z.:** (18);

**Paragraph AA.:** (19);

The Committee further sustained the following Specifications. (The paragraph(s) in parenthesis are those from the Amended Statement of Charges which support the particular specification.)

### **CONVICTION OF A CRIME**

**Sixth Specification:** (Paragraph A.).

### **FAILURE TO MAINTAIN RECORDS WHICH ACCURATELY**

### **REFLECT THE TREATMENT PROVIDED**

**The Eleventh through Fourteenth Specifications:** (Paragraphs B., C., E., F., I., J., L., M., P., Q., S., T., V., W., Y, and Z.)

## **ORDERING EXCESSIVE TESTS**

**Fifteenth through Eighteenth Specifications:** (Paragraphs B., H., I., O., S., U., V., and AA.)

The Committee also concluded that the following Specifications should **not** **be** sustained:

**The First through the Fifth and the Seventh through Tenth Specifications.**

### **DISCUSSION**

Respondent was charged with eighteen specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of conduct that constitute professional misconduct.

During the course of its deliberations on these charges, the Committee consulted a memorandum prepared by 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, among other conduct, fraud in the practice of medicine, and incompetence.

The following definitions were utilized by the Committee during its deliberations:

**Fraud** is an intentional misrepresentation or concealment of a known fact. An individual's knowledge that he/she is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts.

**Incompetence** is a lack of the skill or knowledge necessary to practice the profession.

Using the above-referenced specifications as a framework for its deliberations, the Committee unanimously concluded, by a preponderance of the evidence, that the First through Fourth Specifications of Fraudulent Practice of Medicine and the Fifth specification of Incompetence on More than One Occasion should not be sustained.

The rationale for the Committee's conclusions is set forth below.

The Petitioner presented Dr. George Skelton as its expert witness. Dr. Skelton is board certified in physical medicine and rehabilitation. The Committee found him to be credible.

The Respondent did not present an expert witness, but did testify on his own behalf to all of the charges. The Committee did not find the Respondent always credible. When questioned about one of the medical entities that he owned, he could not remember where it was located (T. 603). The Respondent also contradicted himself regarding whether he reviewed the NCV's prior to deciding whether to do the EMG's (T.613-614). Nor could he remember where he has worked since his conviction (T. 642).

The charges against the Respondent were of two main types: First, there was the conviction of grand larceny, a Class D felony. The Respondent pled guilty to the grand larceny, a Class D felony. The remainder of the charges relate to the medical care that the Respondent provided to four patients at an ambulatory care clinic.

The Committee therefore sustained the Sixth specification of having been convicted of a crime. This conduct clearly constitutes fraud in the practice of medicine. Inexplicably, the Petitioner **did not** include this charge in support of the specification of fraudulent practice of medicine (First through Fourth Specifications). Nor did the Petitioner include this charge in support of the specification of committing conduct in the practice of medicine which evidences moral unfitness (Seventh through Tenth Specifications).



The Committee did not sustain any of these specifications since it thought that the allegations that the Petitioner cited in support of these specifications were insufficient and did not sustain its burden of proof.

The Committee concluded that the Petitioner did not prove the Respondent practiced the profession fraudulently based on the allegations cited in support of those specifications.

The Committee also concluded that Petitioner failed to present sufficient evidence to prove the charge of moral unfitness.

The Petitioner presented three of the four patients as witnesses to support the allegation that the Respondent did not perform the EMG's which the Respondent's records indicate were performed. The Committee found these witnesses to be equivocal in their recollections of what tests were performed on them. The Petitioner had the burden of proof to prove an allegation by a preponderance of evidence. The evidence was insufficient to prove by a preponderance of the evidence that the Respondent did not perform the EMG's. This was the unanimous conclusion of the Committee with respect to all three of the four patients, the exception being Patient B.

The Committee found that based on the definition noted above Respondent's actions did not constitute practicing with incompetence. The Committee found that the Respondent had the requisite knowledge to practice competently.

Although the Committee found that the Respondent's interpretations of certain test results were incorrect, those two instances did not suffice to sustain a finding that the Respondent practiced medicine incompetently.

The Committee concluded that the four medical records in question with the EMG and NCV tests noted on them listed the Respondent as the only provider of services. As such, a justifiable assumption was made that he performed the medical services noted in the record. Yet, the evidence was clear that he did not perform the NCV'S, and furthermore that he did not even supervise the technician who performed these tests.

The Committee concurred with the Petitioner's expert that the Respondent as the physician signing the record in all four cases, was responsible for the contents of the medical records. As such, the number of NCV tests conducted were excessive. Similarly, the billing records for these patients indicated the Respondent had done both the NCV's and the EMG's, and the

insurer was billed as if that were the case. The records inaccurately reflected the medical care provided to these patients.

### **DETERMINATION AS TO PENALTY**

The Committee, pursuant to the Findings of Fact and conclusions set forth above, unanimously determines that Respondent's license to practice medicine in New York State **should be revoked**. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Respondent knowingly participated in a scheme to defraud the Medicaid and Medicare system.

Respondent's conduct represents a fundamental breach of the public trust by a physician, whose high moral integrity must be a distinguishing characteristic. He disregarded his responsibilities as a physician to render care and treatment to a patient. Instead, Respondent knowingly stole money from those two programs over a six year period of time.

Any individual who receives a license to practice medicine is placed in a position of public trust. Respondent essentially forfeited his right to that public trust by his actions with respect to the crime he was convicted of.

The Committee unanimously determined that no sanction short of revocation would adequately protect the public.

**ORDER**

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

1. The Sixth, and the Eleventh through Eighteenth Specifications of professional misconduct, as set forth in the Amended Statement of Charges (Appendix I, attached hereto and made a part of this Determination and Order) <sup>ARE</sup> ~~is~~ **SUSTAINED**;
2. The Respondent's license to practice medicine is **Revoked**.

**DATED: Glenmont, New York**

April 1st, 2006

REDACTED

**CHARLOTTE S. BUCHANAN, ESQ. , Chair**

**JAGDISH M. TRIVEDI, M.D.  
ARTHUR S. HENGERER, M.D.**

Joel Ablove, Esq.  
Associate Counsel  
New York State  
Department of Health  
433 River St.  
Troy, New York 12180

David E. Richman, Esq.  
Rivkin Radler  
960 EAB Plaza  
Uniondale, New York 11556

Jeffrey Schwartz, M.D.

REDACTED

**APPENDIX I**

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

IN THE MATTER  
OF  
JEFFREY S. SCHWARTZ, M.D.  
CO-01-02-0909-A

AMENDED  
STATEMENT  
OF  
CHARGES

JEFFREY S. SCHWARTZ, M.D., the Respondent, was authorized to practice medicine in New York state on October 29, 1982, by the issuance of license number 152188 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about January 8, 1998, in the County Court of the State of New York, County of Nassau, Respondent was found guilty, based on a plea of guilty, of Grand Larceny 3<sup>rd</sup> Degree (two counts), Class D felonies and on or about February 15, 2001, was sentenced to five (5) years probation, \$1,281,854.00 restitution plus a 5% surcharge, a \$150.00 surcharge, and a \$5.00 Crime Victims Assistance Fee.

B. On or about June 10, 2003, at 42-77 65<sup>th</sup> Place, Woodside, NY Respondent prepared an initial Comprehensive Exam in regard to Patient A, wherein he recorded in Patient A's medical record, that Respondent performed Electromyograph (EMG) and Neuroconduction Velocity (NCV) "studies to the upper and lower extremities to rule out radiculopathy."

C. On or about June 10, 2003, Patient A's above described NCVs were performed by a technician who was not in Respondent's employ or in Respondent's presence.

D. On or about June 10, 2003, Patient A's above described EMGs were not performed.

E. On or about June 10, 2003, a billing statement was prepared and submitted, with regard to Patient A, pursuant to Patient A's medical records described in Paragraph B above, to American Home Insurance Company, in the amount \$1,964.94 for the upper extremities tests described in Paragraph B above, indicating Respondent had performed and interpreted the studies.



F. On or about June 10, 2003, a billing statement was prepared and submitted, with regard to Patient A, pursuant to Patient A's medical records, described in Paragraph B above, to American Home Insurance Company, in the amount of \$1,749.00 for the lower extremities tests described in Paragraph B above, indicating Respondent had performed and interpreted the studies.

G. Respondent's interpretation of the findings of June 10, 2003, with regard to Patient A's side to side difference, are incorrect.

H. The studies alleged to have been performed by Respondent on Patient A, had they been performed, would have been excessive.

I. On or about July 8, 2003, at 42-77 65<sup>th</sup> Place, Woodside, NY Respondent prepared an initial Comprehensive Exam in regard to Patient B, wherein he recorded in Patient B's medical record, that Respondent performed Electromyograph (EMG) and Neuroconduction Velocity (NCV) "studies to the upper and lower extremities to rule out radiculopathy."

J. On or about July 8, 2003, Patient B's above described NCVs were performed by a technician who was not in Respondent's employ or in Respondent's presence.

K. On or about July 8, 2003, Patient B's above described EMGs were not performed.

L. On or about July 8, 2003, a billing statement was prepared and submitted, with regard to Patient B, pursuant to Patient B's medical records, described in Paragraph I above, to AIU Insurance Company (AIU), in the amount \$1,964.94 for the upper extremities tests described in Paragraph I above, indicating Respondent had performed and interpreted the studies.

M. On or about July 8, 2003, a billing statement was prepared and submitted, with regard to Patient B, pursuant to Patient B's medical records, described in Paragraph I above, to AIU Insurance Company (AIU), in the amount of \$1,749.00 for the lower extremities tests described in Paragraph I above, indicating Respondent had performed and interpreted the studies.

N. Respondent's interpretation of the findings of July 8, 2003, with regard to Patient B's side to side difference, are incorrect.

O. The studies alleged to have been performed by Respondent on Patient B, had they been performed, would have been excessive.

P. On or about July 8, 2003, at 42-77 65<sup>th</sup> Place, Woodside, NY Respondent prepared an initial Comprehensive Exam in regard to Patient C, wherein he recorded in Patient C's medical record, that Respondent performed Electromyograph (EMG) and Neuroconduction Velocity (NCV) "studies to the upper and lower extremities to rule out radiculopathy."

Q. On or about July 8, 2003, Patient C's above described NCVs were performed by a technician who was not in Respondent's employ or in Respondent's presence.

R. On or about July 8, 2003, Patient C's above described EMGs were not performed.

S. On or about July 8, 2003, a billing statement was prepared and submitted, with regard to Patient C, pursuant to Patient C's medical records, described in Paragraph P above, to AIU Insurance Company (AIU), in the amount \$1,964.94 for the upper extremities tests described in Paragraph P above, indicating Respondent had performed and interpreted the studies.

T. On or about July 8, 2003, a billing statement was prepared and submitted, with regard to Patient C, pursuant to Patient C's medical records, described in Paragraph P above, to AIU Insurance Company (AIU), in the amount of \$1,749.00 for the lower extremities tests described in Paragraph P above, indicating Respondent had performed and interpreted the studies.

U. The studies alleged to have been performed by Respondent on Patient C, had they been performed, would have been excessive.

V. On or about July 22, 2003, at 42-77 65<sup>th</sup> Place, Woodside, NY Respondent prepared an initial Comprehensive Exam in regard to Patient D, wherein he recorded in Patient D's medical record, that Respondent performed Electromyograph (EMG) and Neuroconduction Velocity (NCV) "studies to the upper and lower extremities to rule out radiculopathy."

W. On or about July 22, 2003, Patient D's above described NCVs were performed by a technician who was not in Respondent's employ or in Respondent's presence.

X. On or about July 22, 2003, Patient D's above described EMGs were not performed.

Y. On or about July 22, 2003, a billing statement was prepared and submitted, with regard to Patient D, pursuant to Patient D's medical records, described in Paragraph V above, to AIU Insurance Company (AIU), in the amount \$1,964.94 for the upper extremities tests described in Paragraph V above, indicating Respondent had performed and interpreted the studies.

Z. On or about July 22, 2003, a billing statement was prepared and submitted, with regard to Patient D, pursuant to Patient D's medical records, described in Paragraph V above, to AIU Insurance Company (AIU), in the amount of \$1,749.00 for the lower extremities tests described in Paragraph V above, indicating Respondent had performed and interpreted the studies.

AA. The studies alleged to have been performed by Respondent on Patient D, had they been performed, would have been excessive.

### SPECIFICATIONS

#### FIRST THROUGH FOURTH SPECIFICATIONS

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

1. The facts in Paragraphs B, C, D, E, F, G and/or H.
2. The facts in Paragraphs I, J, K, L, M, N, and/or O.
3. The facts in Paragraphs P, Q, R, S, T, and/or U.
4. The facts in Paragraphs V, W, X, Y, Z, and/or AA.

#### FIFTH SPECIFICATION

Respondent violated New York Education Law §6530(5) by practicing with incompetence on more than one occasion, in that Petitioner charges:

5. The facts in Paragraphs B, C, D, E, F, G, H, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and/or AA,

#### SIXTH SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

6. The facts in Paragraph A.

#### SEVENTH THROUGH TENTH SPECIFICATIONS

Respondent violated New York Education Law §6530(20) by conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

7. The facts in Paragraphs B, C, D, E, F, G, and/or H.
8. The facts in Paragraphs I, J, K, L, M, N, and/or O.
9. The facts in Paragraphs P, Q, R, S, T, and/or U.
10. The facts in Paragraphs V, W, X, Y, Z, and/or AA.

#### ELEVENTH THROUGH FOURTEENTH SPECIFICATIONS

Respondent violated New York Education Law §6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

11. The facts in Paragraphs B, C, D, E, F, G, and/or H.
12. The facts in Paragraphs I, J, K, L, M, N, and/or O.
13. The facts in Paragraphs P, Q, R, S, T, and/or U.
14. The facts in Paragraphs V, W, X, Y, Z, and/or AA.

**FIFTEENTH THROUGH EIGHTEENTH SPECIFICATIONS**

Respondent violated New York Education Law §6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, in that Petitioner charges:

15. The facts in Paragraphs B, C, D, E, F, G, and/or H.
16. The facts in Paragraphs I, J, K, L, M, N, and/or O.
17. The facts in Paragraphs P, Q, R, S, T, and/or U.
18. The facts in Paragraphs V, W, X, Y, Z, and/or AA.

DATED: *Oct. 13*, 2005  
Albany, New York

REDACTED

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