



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

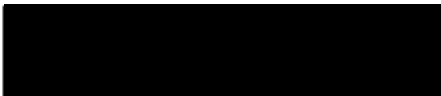
May 8, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Robert Maher, Esq.
& Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place-4th Floor
433 River Street
Troy, New York 12180

Richard A. Finkel, Esq.
Messrs. Kleinberg & Finkel
275 Madison Avenue
New York, New York 10016-1101

Chaim D. Citronenbaum, M.D.
650 East 7th Street
Brooklyn, New York 11218

Chaim D. Citronenbaum, M.D.


RE: In the Matter of Chaim D. Citronenbaum, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-133) 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.

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.

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.

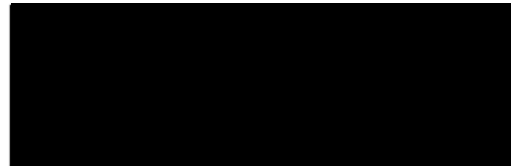
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyfone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

IN THE MATTER
OF
CHAIM D. CITRONENBAUM, M.D.

DETERMINATION
AND
ORDER
BPMC #02-133

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated December 26, 2001, were served upon the Respondent, **CHAIM D. CITRONENBAUM M.D.**. **DAVID T. LYON, M.D., M.P.H.**, Chairperson, **JILL M. RABIN, M.D.** and **NANCY J. MACINTYRE, R.N., Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on April 18, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and by **RICHARD A. FINKEL, ESQ.**

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (2), (20), and (21). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Respondent
Osafradu Opum, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

1. **CHAIM D. CITRONENBAUM M.D.**, the Respondent, was authorized to practice medicine in New York State on July 8, 1983, by the issuance of license number 154908 by the New York State Education Department (Ex. 4).

2. On July 25, 2000, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (hereinafter "New Jersey Board"), by a Consent Order (hereinafter "New Jersey Order"), accepted the voluntary surrender of Respondent's license to practice medicine and surgery in the State of New Jersey, with prejudice to any future attempt to reinstate the license and with the effect of a permanent revocation of licensure, and required him to pay a \$50,000.00 civil penalty, based upon his admission that, on November 9, 1992, he submitted thirty nine (39) claims to insurance carriers that he knew contained false or misleading information (Ex. 5).

SIGNIFICANT LEGAL RULING

In his pre-hearing memorandum and at the hearing, Respondent contested the jurisdiction of this particular Hearing Committee to conduct this hearing, on the ground that the Hearing Committee was not legally constituted pursuant to Public Health Law §230(6) in that it did not include a "lay member" as required by the statute. The Administrative Law Judge denied Respondent's motion to have the Hearing Committee declared illegally constituted.

The essence of Respondent's argument is that Hearing Committee member Nancy Macintyre, who is a registered nurse, is not a "lay member" because she is a "medical professional". In support of this argument, Respondent cited Orens v. Novello, 284 A.D.2d 26, 726 N.Y.S. 2d 499 (3rd Department, 2001), *leave to appeal granted* 97 N.Y.2d 608 (2002); and Mayer v. Novello, 733 N.Y.S. 2d 305, 306, 288 A.D.2d 780 (3rd Department, 2001), *leave to appeal granted*, __N.Y.2d__(Feb. 13, 2002).

Respondent's reliance on these cases is misplaced. In the Orens case, which is the lead case in this area, the Appellate Division concluded that a physician's assistant is not a lay member of a hearing committee. The specific ruling of the court was as follows:

...we conclude that the term "lay member", as used in Public Health Law §230(6), cannot include a physician's assistant or other licensed medical practitioner whose profession is also subject to the Public Health Law §230 disciplinary process. This finding is consistent with the legislative history of this statute, which takes us back nearly a quarter of a century.

The nursing profession is not subject to the §230 disciplinary process, which covers only physicians, medical residents, physician's assistants and specialist's assistants (Public Health Law 230(7)). Therefore, the Orens case does not apply. Nursing is, in fact, a separate profession from the practice of medicine and the perspective a nurse brings to

the medical misconduct review process is at an entirely different level and focus than that brought by a physician or physician's assistant. A nurse is not a member of the "medical profession", but, rather, a member of the nursing profession and of the larger community of "health care professionals".

Upon determining that the Hearing Committee was not illegally constituted, the Administrative Law Judge denied Respondent's motion, and the hearing proceeded on the merits.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the New Jersey Board's disciplinary actions against Respondent constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(9) (b);
- New York Education Law §6530(9) (d);

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED 3-0

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York State.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on July 25, 2000, the New Jersey Board, by issuance of the New Jersey Order, accepted the voluntary surrender of Respondent's license to practice medicine and surgery in the State of New Jersey, with prejudice to any future attempt to reinstate the license and with the effect of a permanent revocation of licensure, and required him to pay a \$50,000.00 civil penalty, based upon his admission that, on November 9, 1992, he submitted thirty nine (39) claims to insurance carriers that he knew contained false or misleading information (Ex. 5).

At the hearing, the thrust of Respondent's testimony regarding the occurrences underlying the New Jersey Order was that he did not know the insurance claims at issue were filed fraudulently. The Hearing Committee cannot consider this testimony because it is bound by Respondent's admission in the New Jersey proceeding that he submitted various insurance documents and reports to carriers "knowing that these fee slips, narrative reports and Attending Physician Reports...contained false or misleading information material to the claims".

The admissions made by Respondent in the New Jersey disciplinary proceeding and the issuance of the Order requiring permanent surrender of his New Jersey medical license constituted misconduct under the New York statutes cited above. Accordingly, the only issue remaining to be decided is the penalty to be imposed in this state.

In addressing this issue, the Hearing Committee considered a significant body of evidence attesting to Respondent's medical skills, dedication to the practice of medicine, caring patient relationships and charitable efforts (Ex's C-F; testimony of Osafradu Opum, M.D.; Respondent's testimony). In addition, the Hearing Committee notes that Respondent's misconduct did not involve any problems with patient care. The Hearing Committee concludes that these factors support its determination to impose a penalty less severe than revocation of Respondent's medical license.

However, the Hearing Committee also received evidence, for the purpose of determining the appropriate penalty to be assessed only, that after the New Jersey Board's action, on March 13, 1997, Respondent entered into a Consent Order with the New York State Board for Professional Medical Conduct (the "New York Board") wherein he admitted to a specification in a Statement of Charges brought against him that he had engaged in Advertising Not in the Public Interest (NY Education Law §6530(27)) by:

1. Knowingly and intentionally advertising himself as being Board Certified in Physical Medicine, knowing that this claim was false at the time he made it;
2. Knowingly and intentionally advertising himself as being an attending physician at the Hospital for Joint diseases in Manhattan, knowing that this claim was false at the time he made it;
3. Knowingly and intentionally advertising himself as being an attending physician at Kingsbrook Hospital Medical Center in New York City, knowing that this claim was false at the time he made it;
4. Knowingly and intentionally advertising himself as being "assistant

professor" at Downstate Medical Center, knowing that this claim was false at the time he made it;

5. Knowingly and intentionally advertising that he currently was or had been Director of Rehabilitation at Thomas Jefferson Home for Adults, Scharf Manor and New Broadview Manor, knowing that this claim was false at the time he made it;
6. Knowingly and intentionally advertising himself as being a member of the American Congress of Rehabilitation and American Academy of Physical Medicine and Rehabilitation, knowing that this claim was false at the time he made it; and
7. Knowingly and intentionally advertising himself as having graduated from Downstate Medical School with honors, knowing that this claim was false at the time he made it;

Respondent received a two-year stayed suspension, two-year probation and imposition of a \$10,000 fine pursuant to the New York Order.

The evidence relating to Respondent's actions in New Jersey and New York illuminate what the Hearing Committee feels is a disturbing pattern of dishonesty and deception on Respondent's part relating to his practice of medicine. The Hearing Committee concludes that a significant penalty is appropriate to send to Respondent a clear and compelling message that his misconduct is viewed as being of a serious nature, and to serve as a harbinger of the sanctions to which he will be subject if he engages in any future acts of misconduct.

Accordingly, the Hearing Committee determines that Respondent's New York medical license should be suspended for three (3) years, with all but three months of that suspension stayed. The suspension shall be effective one month from the effective date of this Decision and Order, in order to provide the Respondent with sufficient time to make alternative arrangements for the care of his patients during the period of his suspension. Respondent is also placed on probation for three (3) years, the terms of which are set forth in the Order that follows this decision. In

addition, the Hearing Committee determines that a fine of \$10,000.00 should be imposed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Medical license of **CHAIM D. CITRONENBAUM M.D.** is hereby **SUSPENDED** for three (3) years, to be effective one month from the effective date of this decision. All but three (3) months of this suspension are hereby stayed.
2. A fine in the amount of Ten Thousand Dollars (\$10,000.00) is assessed against the Respondent. Payment of the fine shall be due within 60 days of the effective date of this Order. The Respondent shall make payment to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York, 12237. Any fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest; late payment charges and collection fees; referral to the New York Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).
3. Respondent is placed on probation for three (3) years from the effective date of this decision.
4. The terms of Respondent's probation are as follows:
 - A). Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral, ethical and professional standards of conduct and obligations imposed by law and by his profession. This includes providing only accurate, truthful and complete information in all advertisements, and in any official reports or documents. Respondent acknowledges that if 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);

- B). Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice, professional and residential addresses or 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 during the probationary period, within 30 days of each event;
- C). Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- D). 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 he ceases to be 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 again notify the Director 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.
- E). Respondent's professional performance may be reviewed at any time by the Director of OPMC. These reviews may include, but shall not be limited to, a review of office records, patient records, hospital charts, billing records and/or other financial records; and/or interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices. Respondent shall execute any releases necessary to enable such reviews.
- F). Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients.
- G). Respondent shall comply with all terms, conditions, and restrictions to which he 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.
- H). OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation if it is satisfied that Respondent's continued unsupervised practice of medicine in New York State would not be contrary to the best interests of New York State residents.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

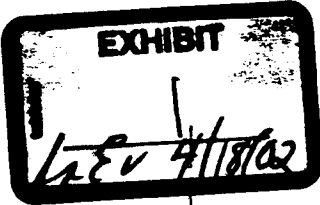
DATED: Watertown, New York
MAY 6, 2002



DAVID T. LYON, M.D., M.P.H.
Chairperson

JILL M. RABIN, M.D.
NANCY J. MACINTYRE, R.N., PhD.

APPENDIX I



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

IN THE MATTER
OF
CHAIM D. CITRONENBAUM, M.D.
CO-00-08-3780-A

NOTICE OF
REFERRAL
PROCEEDING

TO: CHAIM D. CITRONENBAUM, M.D.
[REDACTED]

CHAIM D. CITRONENBAUM, M.D.
650 East 7th Street
Brooklyn, NY 11218

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20th day of February 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before February 11, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before February 11, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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 proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

December 26, 2001



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
CHAIM D. CITRONENBAUM, M.D.
CO-00-08-3780-A

STATEMENT
OF
CHARGES

CHAIM D. CITRONENBAUM, M.D., the Respondent, was authorized to practice medicine in New York state on July 8, 1983, by the issuance of license number 154908 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 25, 2000, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (hereinafter "New Jersey Board"), by a Consent Order (hereinafter "New Jersey Order"), accepted the voluntary surrender of Respondent's license to practice medicine and surgery in the State of New Jersey, with prejudice to any future attempt to reinstate the license and with the effect of a permanent revocation of licensure and required him to pay a \$50,000.00 civil penalty, based on presenting, in 1992, thirty nine (39) claims that he knew contained false or misleading information.

B. The conduct resulting in the New Jersey Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(20) (moral unfitness); and/or
3. New York Education Law §6530(21) (willfully making or filing a false report).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having surrendered his license or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *Dec. 26*, 2001
Albany, New York


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