



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*

August 4, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David W. Smith, Esq.  
Associate Counsel  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Saverio Senape, M.D.  
215 W. 92nd Street  
New York, New York 10025

M. Jane Kronenberger, Esq.  
Lester, Schwab, Katz & Dwyer  
120 Broadway  
New York, New York 10271-0071

**RE: In the Matter of Saverio Senape, M.D.**

Dear Mr. Smith, Dr. Senape and Ms. Kronenberger:

Enclosed please find the Determination and Order (No. BPMC-97-190) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

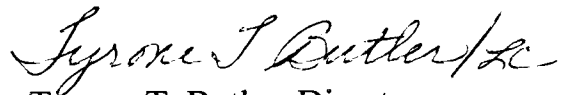
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc

Enclosure

COPY

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

-----X  
IN THE MATTER : DETERMINATION  
OF : AND  
SAVERIO SENAPE, M.D. : ORDER  
-----X  
BPMC-97-190

A Notice of Referral Proceeding and Statement of Charges, both dated may 27, 1997, were served upon the Respondent, Saverio Senape, M.D. **DAVID HARRIS, M.D. (Chair), MICHAEL A. GONZALEZ, R.P.A., and GERALD M. BRODY, M.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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by David W. Smith, Esq., Associate Counsel. The Respondent appeared by Lester, Schwab, Katz & Dwyer, M. Jane Kronenberger, Esq., of Counsel. A hearing was held on July 24, 1997. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

### STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i) [being convicted of committing an act constituting a crime under New York State law. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Saverio Senape, M.D. (hereinafter, "Respondent"), was

authorized to practice medicine in New York State on August 13, 1966 by the issuance of license number 097202 by the New York State Education Department. (Pet. Ex. #2).

2. On December 13, 1995, after a trial in New York State Supreme Court, Kings County, at which Respondent was represented by counsel, Respondent was convicted of several felonies in connection with his participation in the Medicaid program. More specifically, Respondent was convicted of one count of grand larceny in the 2nd degree (Penal Law §155.40); eight counts of offering a false instrument for filing in the 1st degree (Penal Law §175.35); one count of falsifying business records in the 1st degree (Penal Law §175.10), and one count of aiding and abetting the unauthorized practice of medicine (Education Law §6512). (Pet. Ex. #3).

3. Respondent was sentenced to six months in jail, five years of probation, and ordered to make restitution in the amount of \$100,000.00. (Pet. Ex. #4).

#### CONCLUSIONS OF LAW

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

On July 25, 1997 (one day after the hearing), Respondent filed an Answer. Public Health Law §230(10)(c) requires a Respondent to 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, and that any charge and allegation not so

answered shall be deemed admitted. Given that Respondent failed to comply with this requirement, he is deemed to have admitted each of the charges and allegations set forth in the Statement of Charges.

Respondent raised two affirmative defenses in his Answer. First, Respondent alleged that he was not served in accordance with the provisions of the Public Health Law and the State Administrative Procedure Act (SAPA). He therefore argued that the Hearing Committee lacked jurisdiction over him.

At the hearing, Petitioner offered into evidence, without objection, an affidavit of service documenting the fact that Respondent was personally served with the Notice of Referral Proceeding and Statement of Charges on June 12, 1997. Public Health Law §230(10)(d) provides that a copy of the charges and the notice of hearing shall be served on the licensee personally at least twenty days before the hearing.

Respondent failed to produce any evidence or legal justification in support of the claimed jurisdictional defect. Therefore, the first affirmative defense must be rejected.

Respondent raised, as a second affirmative defense, the argument that the offensive use of the doctrine of collateral estoppel by a non-party is insufficient to prove a charge of professional misconduct pursuant to Education Law §6530(9)(a)(i). This argument must also fail.

Education Law §6530(9)(a)(i) explicitly defines professional misconduct as being convicted of committing an act constituting a crime under New York state law. All that is

necessary to prove such an allegation is proof of conviction by a court of competent jurisdiction. Respondent (who was, of course, a party to the underlying criminal proceeding) is then estopped from re-litigating the underlying offenses.

The Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was convicted, following a trial, of numerous crimes under New York State law. Consequently, he is guilty of professional misconduct in violation of Education Law §6530(9)(a)(i). The Committee voted to sustain the specification of professional misconduct set forth in the Statement of Charges.

#### DETERMINATION AS TO PENALTY

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

Respondent was convicted of a series of crimes involving the Medicaid program, and was found to have fraudulently obtained thousands of dollars. By doing so, Respondent prevented scarce resources from being spent where they could best serve the people of this state. Perhaps more significantly, Respondent also aided



and abetted in the practice of medicine by individuals not licensed to practice medicine in this state. Respondent placed the health and well-being of his patients at risk by allowing unlicensed individuals to treat them. These actions warrant revocation, absent a showing of compelling reasons to impose a lesser sanction.

A careful review of the record demonstrates that no such compelling reasons were presented by Respondent. Although Respondent testified at length about his background and experience, there was a troubling demonstration of grandiosity in his thinking. He strongly implied, through his curriculum vitae (c.v.) and his direct testimony, that he had conducted extensive research and published papers based on that research. However, under questioning from the members of this committee, it became apparent that no such publications ever occurred.

It also became clear that Respondent did not include all of his medical employment history on his c.v. Those experiences which are listed show that Respondent has practiced on the margins of the medical community for many years, primarily in *locum tenens* positions. It did not appear that Respondent has any hospital affiliations, and therefore is not subject to peer review on a regular basis. The absence of such affiliations makes it difficult to envision allowing Respondent to practice under some form of supervision.

The Hearing Committee was greatly concerned by Respondent's apparent lack of insight into the magnitude of his misdeeds. Although he appeared genuinely remorseful regarding

his jail sentence, he did not appear to recognize that his conduct was wrong. He rationalized his situation by "accepting" that the state considered what he did to be wrong. Nevertheless, he did not believe his actions, either in terms of billing fraud, or the use of unlicensed practitioners, were improper. In essence, he testified that it was appropriate to use unlicensed physicians because he was treating a medically underserved community and the unlicensed practitioners were available to act as physician extenders.

Given this propensity to rationalize his actions, the Committee is simply not convinced that Respondent would not violate the law again, if given the opportunity. Under the totality of the circumstances, the Committee unanimously determined that revocation is the only sanction which will adequately protect the people of this state from further misconduct by Respondent.

ORDER


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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED;**

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED;**

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York  
July 30, 1997

  
\_\_\_\_\_  
DAVID HARRIS, M.D. (CHAIR)

MICHAEL A. GONZALEZ, R.P.A.  
GERALD M. BRODY, M.D.

TO: David W. Smith, Esq.  
Associate Counsel  
New York State Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001

Saverio Senape, M.D.  
215 W. 92nd Street  
New York, New York 10025

M. Jane Kronenberger, Esq.  
Lester, Schwab, Katz & Dwyer  
120 Broadway  
New York, New York 10271-0071

APPENDIX I

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

IN THE MATTER  
OF  
SEVERIO SENAPE, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: SEVERIO SENAPE, M.D.  
Metropolitan Correction Center  
150 Park Row  
New York, New York 10007

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1997) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1997). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on July 24, 1997, 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 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. 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 which 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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated 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.

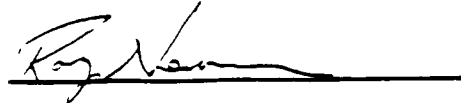
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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: New York, New York  
May, 27 1997



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

DAVID W. SMITH  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2615

IN THE MATTER  
OF  
SAVERIO SENAPE, M.D.

STATEMENT  
OF  
CHARGES

SAVERIO SENAPE, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 13, 1966, by the issuance of license number 097202 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about December 13, 1995, after trial in New York State Supreme Court, Kings County, at which Respondent was represented by counsel, Respondent was convicted of the following felonies in connection with his participation in the Medicaid program:
- a. Grand Larceny in the 2nd Degree (Penal Law §155.40);
  - b. Offering a false instrument for filing in the 1st Degree. (Penal Law §175.35);
  - c. Falsifying Business Records in the 1st Degree (Penal Law §175.10); and
  - d. Aiding and abetting the unauthorized practice of medicine. (Education Law §6512).

1. Respondent was sentenced to six (6) months in jail, five (5) years probation and ordered to make restitution of \$100,000.00.

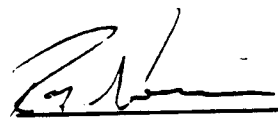
**SPECIFICATION**

**CRIMINAL CONVICTION**

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:

1. Paragraphs A and A1.

DATED: May 27, 1997  
New York, New York



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**ROY NEMERSON**  
Deputy Counsel  
Bureau of Professional  
Medical Conduct