



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

October 1, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ERVIN

~~Erwin~~ P. Lepko, M.D.
18 Jane Drive
Englewood Cliffs, New Jersey 07632-2307

Robert Bogan, Esq.
Associate Counsel
NYS Division of Legal Affairs
Office of Professional Medical Conduct
433 River Street – 1st Floor Annex
Troy, New York 12180-2299

ERVIN

RE: In the Matter of ~~Erwin P.~~ Lepko, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-307) 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:

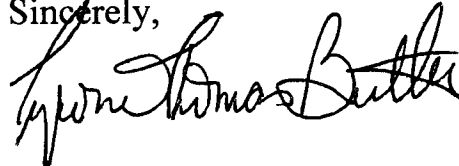
James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

IN THE MATTER

OF

ERVIN
ERWIN E. LEPKO, M.D.

DETERMINATION

AND

ORDER

BPMC NO. 02+307

A hearing was held on September 18, 2002, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated August 5, 2002, were served upon the Respondent, ^{*ERVIN*} ~~Edwin~~ Lepko, M.D. Ernst A. Kopp, M.D., Chairperson, John W. Choate, M.D., and Stephen E. Wear, 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. John Wiley, Esq., Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by Donald P. Berens, Jr., Esq., General Counsel, by Robert Bogan, Esq., of Counsel. The Respondent did not appear at the hearing, either in person or by counsel. The Respondent did submit documents by mail for inclusion in the hearing record.

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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 Section 6530(9)(a)(ii). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	None

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.

1. Edwin F. Lepko, M.D., the Respondent, was authorized to practice medicine in New York State on October 16, 1969, by the issuance of license number 104958 by the New York State Education Department (Petitioner's Ex. 4).

2. On October 29, 2001, in the United States District Court, District of New Jersey, the Respondent was found guilty of Health Care Fraud in violation of 18 U.S.C. Sections 1347 and 2, and was sentenced to three years probation, a \$10,000 fine and payment of \$3,029.70 in restitution (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing. The Administrative Law Judge ruled on the record that Petitioner's Ex. 2 and 3 demonstrated that legally sufficient notice of the hearing had been served on the Respondent and that the hearing could proceed. The Respondent submitted by mail a package of documents for inclusion in the hearing record which the Administrative Law Judge admitted into evidence as Respondent's Ex.

A.

Anesthesia services performed by the Respondent were reimbursed according to the amount of time spent providing the service, that is, the more time spent providing the service to the patient, the greater the reimbursement available from the insurance company. The Respondent was convicted of Health Care Fraud for claiming reimbursement for anesthesia services for a greater amount of time than the time actually spent by the Respondent providing the service.

Since the Respondent did not appear at the hearing, there is no testimony from him regarding mitigating circumstances, rehabilitation or remorse. The Respondent's letter to

the Hearing Committee, which constitutes the first two pages of Respondent's Ex. A, also contains no evidence of mitigating circumstances, rehabilitation or remorse. In fact, the final four paragraphs of this letter are a denial that the Respondent committed the crime for which he was convicted. The Respondent's contention is that he provided post-operative anesthesia services that were wrongly rejected by the prosecutor and the District Court as billable service time.

Public Health Law Section 230(10)(p) precludes consideration of this position. Pursuant to this statute, the Hearing Committee must accept the facts supporting the conviction as accurate and must limit its determination to the penalty to be imposed. The Hearing Committee cannot rule that the Respondent's billing practice was not criminal behavior.

The only evidence in Respondent's Exhibit A relevant to the question of penalty is a collection of letters from former patients praising the medical care received from the Respondent and the Respondent's own self-serving description of his medical practices. This evidence is far outweighed by the existence of the criminal conviction, the direct relationship of the crime to the Respondent's profession, and the absence of evidence of mitigation, rehabilitation or remorse.

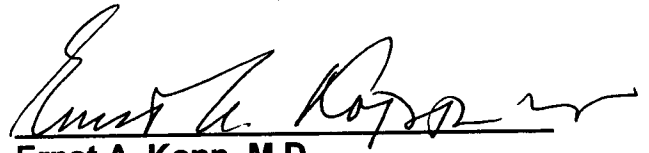
The Petitioner has requested a revocation of the Respondent's license. The Hearing Committee agrees that this is the penalty that is warranted by the circumstances of this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Loudonville, New York
Sept 30th, 2002



Ernst A. Kopp, M.D.
Chairperson

John W. Choate, M.D.
Stephen E. Wear, Ph.D.

APPENDIX I

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

EV 9/18/02

IN THE MATTER

NOTICE OF

Ervin OF
ERWIN E. LEPKO, M.D.
CO-02-05-2331-A

REFERRAL

PROCEEDING

Ervin
TO: ERWIN E. LEPKO, M.D.
18 Jane Drive
Englewood Cliffs, NJ 07632-2307

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 18th day of September 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 September 18, 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 September 18, 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

August 5, 2002



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

IN THE MATTER

ERVIN OF
ERWIN E. LEPKO, M.D.
CO-02-05-2331-A

STATEMENT
OF
CHARGES

v
ERWIN E. LEPKO, M.D., the Respondent, was authorized to practice medicine in New York state on October 16, 1969, by the issuance of license number 104958 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 29, 2001, in the United States District Court, District of New Jersey, Respondent was found guilty of Health Care Fraud in violation of 18 U. S.C. §1347 and 2, and was sentenced to three (3) years probation, a \$10,000 fine, and to pay \$3,029.70 restitution.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: *August 5*, 2002
Albany, New York

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