



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

January 29, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kishorekumar Ramkrishna Shukla, M.D.
Elkton Federal Correctional Facility
Elkton, Ohio 44415

B. Alan Seidler, Esq.
127 South Broadway
Nyack, NY 10960

Kishorekumar Ramkrishna Shukla, M.D.
8730 Scroggs Road
Elkton, Ohio 44415

Steven J. Masef, Esq.
NYS Department of Health
5 Penn Plaza – 6th Floor
New York, NY 10001

RE: In the Matter of Kishorekumar Ramkrishna Shukla, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-24) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 black ink that reads "Tyrone Butler/MA". The signature is written in a cursive style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC 99 - 24

IN THE MATTER
OF
KISHOREKUMAR RAMKRISHNA SHUKLA, M.D.

MS. CAROLYN C. SNIPE, (Chair), FRANK E. IAQUINTA, M.D. and KENNETH J. FREESE, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) and §230(12) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by STEVEN J. MASEF, ESQ., Assistant Counsel.

Respondent, KISHOREKUMAR RAMKRISHNA SHUKLA, M.D., did not appear personally and was not represented by counsel.

A Hearing was held on January 19, 1999. Evidence was received and examined. A Transcript of the proceeding was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq. of the Public Health Law of the State of New York [hereinafter "**P.H.L.**"]).

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent). This case was also commenced pursuant to P.H.L. §230(12).

Under §230(12)(b) of the P.H.L., a Commissioner's Summary Order ("**Order**") dated September 10, 1998, and a Statement of Charges, dated September 1, 1998, were issued by **BARBARA A. DeBUONO, M.D., MPH**, as Commissioner of Health of the State of New York. Said Order and Statement of charges were served on Respondent on September 22, 1998.

The Commissioner's Order summarily suspended Respondent's license to practice medicine in the State of New York. The Order was accompanied by a Statement of Charges setting forth one specification of professional misconduct, as delineated in §6530 of the Education Law of the State of New York ("**Education Law**").

KISHOREKUMAR RAMKRISHNA SHUKLA, M.D., ("**Respondent**") is charged with professional misconduct within the meaning of §6530(9)(a)(ii) of the Education Law, to wit: professional misconduct ... by reason of being convicted of committing an act constituting a crime under Federal Law (Department's Exhibit # 1 and §6530[9][a][ii] of the Education Law).

A copy of the Notice of Summary Proceeding, Commissioner's Order and Statement of Charges is attached to this Determination and Order as Appendix I.

¹ P.H.L. §230(10)(p), fifth sentence.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on August 17, 1971 by the issuance of license number 110052 by the New York State Education Department (Department's Exhibits # 1 & # 2)².

2. Respondent is not currently authorized to practice medicine in New York because his license was summarily suspended by the Commissioner of Health upon service of the Commissioner's Summary Order on September 22, 1998 (Department's Exhibit # 1).

3. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (Respondent was personally served - P.H.L. §230[10][d]); (Department's Exhibit # 1); (determination made by the Administrative Officer [see transcript]).

4. On or about February 1998, Respondent plead guilty, in the United States District Court, Southern District of New York ("**Court**") of violation of one count of Title 18 of the United States Code §371 (conspiracy to submit false claims) and one count of violation of Title 42 of the United States Code §1320 a-7B(a)(2) (Medicaid fraud) (Department's Exhibit # 3).

² refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit) or submitted on behalf of Dr. Kishorekumar Ramkrishna Shukla (Respondent's Exhibit).

5. As a result of said guilty plea, Respondent was sentenced to twenty-seven (27) months in prison; supervised release for a term of two (2) years; and ordered to make restitution in the amount of \$855,390.00 (Department's Exhibit # 3).

6. Respondent has not filed a written answer to each (or any) of the charges and allegations contained in the Statement of Charges (P.H.L. '230[10][p]).

7. Paragraph A of the Factual Allegations contained in the September 1, 1998 Statement of Charges is deemed admitted by the Hearing Committee by operation of law (P.H.L. §230[10][p]); (See Appendix I).

8. The Hearing Committee finds that the charge of professional misconduct within the meaning of Education Law §6530(9)(a)(ii) is deemed admitted by operation of law (P.H.L. §230[10][p]); (Specification of Criminal Conviction [federal]); (See Appendix I).

CONCLUSIONS OF LAW

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

The Hearing Committee concludes that the Factual Allegations, from the September 1, 1998 Statement of Charges is SUSTAINED

The Hearing Committee concludes and determines, based on all of the evidence presented, that the SPECIFICATION OF CRIMINAL CONVICTION (Federal) is SUSTAINED.

I Professional Misconduct under §6530(9)(a)(ii) of the Education Law.

The Hearing Committee concludes that the Department of Health has shown, by a preponderance of the evidence, that Respondent was convicted of committing a crime under Federal Law. Respondent's conviction constitutes professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED. In addition, the Hearing Committee determines that Respondent should be fined the sum of ten thousand (\$10,000.00) dollars for his violation of §6530 of the Education Law.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The record establishes that Respondent was convicted of committing crimes under Federal Law. Respondent was convicted of committing frauds on the Medicaid system.

The numerous acts of fraud occurred when Respondent, knowingly and intentionally, made repeated claims on the Medicare system for durable medical equipment for patients knowing that said equipment was not medically necessary.

The Hearing Committee believes that Respondent's conduct was done to benefit his own personal greed. The Hearing Committee believes that Respondent has shown a lack of honesty which has manifested itself on a number of occasions. The Hearing Committee does not believe that there was a lack of understanding by Respondent or that the Medicaid fraud was just unintentional errors, mistakes, or omissions.

The Hearing Committee believes that censure and reprimand are not appropriate under the circumstances. Limitations on Respondent's license and education or retraining are also inappropriate in that there is insufficient proof in the record regarding Respondent's medical ability or knowledge. The Hearing Committee also rejected the possibility of allowing Respondent to practice in a structured non-billing environment, such as a P.H.L. Article 28 facility because of Respondent's history of dishonesty.

The record establishes that Respondent committed violations of Federal Laws. Respondent's lack of integrity is evident by his conduct and criminal conviction.

The Hearing Committee was not given any reason to believe that Respondent's actions could not occur again. Respondent's acts were deliberate, not accidental and not unconscious. Although Respondent submitted indications that he wanted to surrender his license, the Hearing Committee is not bound by Respondent's wishes. Respondent provided no mitigation for consideration by the Hearing Committee.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the taxpayers and the safety of the people of New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances. The Hearing Committee believes the imposition of a fine is appropriate considering the amount of fraud that Respondent benefited from at the expense of the taxpaying public.

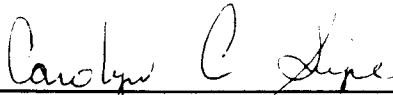
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Department's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**; and
3. Respondent is fined the sum of **TEN THOUSAND DOLLARS (\$10,000.00)** payable within 30 days from the effective date of this Order; and
4. Payment of the civil penalty shall be sent by certified mail, return receipt requested, to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower Building, Room 1258, Albany, New York 12237 and shall be made payable by certified check to the New York State Department of Health; and
5. Any civil penalty not paid by the date prescribed herein 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 State 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).

DATED: New York, New York
January 26, 1999



MS. CAROLYN C. SNIPE
FRANK E. IAQUINTA, M.D.
KENNETH J. FREESE, M.D.,

TO:

Kishorekumar Ramkrishna Shukla, M.D.
Elkton Federal Correctional Facility
Elkton, Ohio

Kishorekumar Ramkrishna Shukla, M.D.
8730 Scroggs Road
Elkton, Ohio

B. Alan Seidler, Esq.
127 South Broadway
Nyack, NY 10960

Steven J. Masef, Esq.
Assistant Counsel.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

APPENDIX I

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

IN THE MATTER
OF
KRISHOREKUMAR RAMKRISHNA SHUKLA, M.D.

NOTICE OF
SUMMARY
PROCEEDING

TO: KRISHOREKUMAR RAMKRISHNA SHUKLA, M.D.
Elkton Federal Correctional Facility
Elkton, Ohio

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(12) and (10)(p) (McKinney 1990 and Supp. 1998) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on October 14, 1998, 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 to the Commissioner's Summary Order that has been or is being served upon you. 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. 1998) 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

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
September, // 1998



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Roy Nemerson
Deputy Counsel, B.P.M.C.
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

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

IN THE MATTER
OF
KRISHOREKUMAR RAMKRISHNA SHUKLA, M.D.

COMMISSIONER'S
SUMMARY
ORDER

TO: KRISHOREKUMAR RAMKRISHNA SHUKLA
Elkton Federal Correctional Facility
Elkton, Ohio

The undersigned, Barbara A. DeBuono, M.D., M.P.H., Commissioner of Health of the State of New York, pursuant to N.Y. Public Health Law §230 (McKinney 1990 and Supp. 1998), upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that KRISHOREKUMAR RAMKRISHNA SHUKLA, M.D., the Respondent, has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached hereto and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b) (McKinney 1990 and Supp. 1998), that effective immediately, Respondent shall not practice medicine in the State of New York.


Any practice of medicine in the State of New York in violation of this (Commissioner's) Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29) and may constitute unauthorized medical

practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the service of this order and shall end within ninety days thereafter. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1998), and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Summary Hearing to be provided to the Respondent either contemporaneously with this Summary Order or subsequently. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order (at the addresses set forth below), and the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a (McKinney Supp. 1998). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
September 10, 1998


BARBARA A. DeBUONO, M.D., M.P.H.
Commissioner of Health

Inquiries should be directed to:
Roy Nemerson
Deputy Counsel
N.Y.S. Department of Health
Division of Legal Affairs
5 Penn Plaza
Suite 601
New York, New York 10001
(212) - 613-2615

IN THE MATTER
OF
KRISHOREKUMAR RAMKRISHNA SHUKLA, M.D.

STATEMENT
OF
CHARGES

KRISHOREKUMAR RAMKRISHNA SHUKLA, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 17, 1971, by the issuance of license number 110052 by the New York State Education Department. By order of the Commissioner of Education (date of action October 23, 1980), Respondent's license to practice medicine in the New York State was suspended for a period of two years, with 23 months of such suspension stayed, and was placed on probation as a result of professional misconduct relating to the prescribing of controlled substances to patients.

FACTUAL ALLEGATIONS

- A. By a February 19, 1998 Judgement upon a Guilty Plea entered before the United States District Court for the Southern District of New York, Respondent was convicted of committing acts constituting one count of Conspiracy to submit False Claims (18 USC 371) and one count of Medicaid Fraud (42 USC 1320 a-7B(a)(2)). Respondent was sentenced to incarceration for a period of 27 months.

SPECIFICATION OF CHARGES


SPECIFICATION

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraph A.

DATED: September / , 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Profession