



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

November 29, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph N. Charles, M.D.
440 East 19th Street, 2nd Floor
Brooklyn, New York 11226

Joseph N. Charles, M.D.
752 Lincoln Avenue
Brooklyn, New York 11208

Alan Lambert, Esq.
Lifschitz, Poland & Hoffman, P.C.
675 3rd Avenue
New York, New York 10017

Robert Bogan, Esq.
& Paul Robert Maher, Esq.
NYS Department of Health
Hedley Building – 4th Floor
Troy, New York 12180

RE: In the Matter of Joseph N. Charles, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-327) 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.

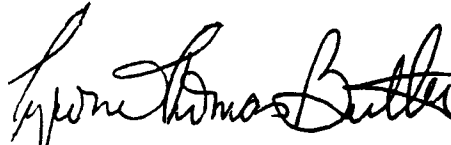
The notice of review served on the Administrative Review Board should be forwarded to:

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,

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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

**IN THE MATTER
OF
JOSEPH N. CHARLES, M.D.**

**DETERMINATION
AND
ORDER**

BPMC 00-327

A Notice of Referral Proceeding and Statement of Charges, both dated June 27, 2000, were served upon the Respondent, **JOSEPH N. CHARLES, M.D.**

DONALD CHERR, M.D., Chairperson, **JOSEPH GEARY, M.D.** and **MS. D. MARISA FINN**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on November 15, 2000, 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 was represented by **LIFSHUTZ, POLLAND & HOFFMAN, P.C.**, 675 Third Avenue, New York, N.Y. 10017, by **THOMAS M. GALLO, ESQ.**, of Counsel.

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 case, 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 Section 6530(9)(a)(ii). A copy of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

NONE

For Respondent:

Joseph N. Charles, M.D., the Respondent

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. All Hearing Committee findings were unanimous unless otherwise specified.

1. JOSEPH N. CHARLES, M.D., the Respondent, was authorized to practice medicine in New York State on April 3, 1972, by the issuance of license number 111981 by the New York State Education Department. (Pet's Ex. 4).

2. On January 7, 2000, in the United States District Court, Eastern District of New York, Respondent was found guilty of nine (9) felony counts of Payment of Medicaid Kickbacks in violation of 42 U.S.C. §1320a-7b(b)(2)(B), and was sentenced to five (5) months imprisonment at the Brooklyn Community Correction Center, \$22,000.00 restitution, and a \$900.00 assessment, and upon release from imprisonment, two (2) years supervised release to include five (5) months home confinement. (Pet's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

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

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on January 7, 2000, the Respondent was convicted in federal court of nine (9) counts of Medicare kickbacks. He was sentenced to five (5) months imprisonment, \$22,000.00 restitution, a \$900.00 assessment and upon release from imprisonment, two (2) years supervised release to include five (5) months home confinement.

The Respondent has also been notified that he has been excluded from participation in the Medicare program for a period of five (5) years.

There are some mitigating factors in the record which the Hearing Committee has taken into consideration in determining the nature and severity of the penalty to be imposed upon the Respondent.

- The Respondent has already served five (5) months imprisonment at the Brooklyn Community Correction Center and is currently serving two (2) years supervised release which includes five (5) months of home confinement. He is in the process of paying restitution.

- The charges in this case do not reflect on the Respondent's competence as a practicing physician.

- With the exception of the instant charge, the Respondent's medical career has been without blemish.

- The Respondent has practiced medicine in the East New York and East Flatbush areas of New York City for twenty-five (25) years. Both of these areas are socio-

economically deprived and underserved communities with patients who are often unable to pay.

- The Hearing Committee is convinced that the Respondent is truly contrite and regrets his violations of federal law.
- The Hearing Committee is convinced that the Respondent will not repeat such conduct.

After due consideration of the full spectrum of penalties available pursuant to statute the Hearing Committee determines unanimously, (3-0), that the Respondent's misconduct warrants a penalty of a two (2) year suspension, staying said suspension, and placing the Respondent on probation under terms and conditions as hereinafter set forth in the ORDER.

ORDER

IT IS HEREBY ORDERED:

1. The Respondent's license to practice medicine in New York State is hereby **SUSPENDED** for two (2) years, suspension **STAYED**.

2. The Respondent is placed on probation for a period to run concurrent with the remaining period of his federal supervised release under the following terms and conditions:

- Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
- Respondent shall submit written notification of the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street, Fourth (4th) Floor, Troy, New York 12180: said notice is to include a full description of any employment and practice; professional and residential addresses and 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, within thirty (30) days of each action.
- Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by state rules and regulations.
- Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, billing records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.


- Respondent shall fully cooperate with and respond in a timely manner to request 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.
- 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 Respondent is not currently 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 then notify the Director again 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.

3. The Respondent shall comply with all of the terms and conditions of supervised release as prescribed by the Federal Court. The Respondent shall cause his federal probation officer to submit semi-annual reports to the Office of Professional Medical Conduct reporting on his compliance or failure to comply with any or the terms of his federal supervised release and report on any changes in the duration or terms of his federal supervised release.

4. Respondent shall comply with all terms, conditions, restrictions, limitations, and penalties to which he is subject pursuant to this Order and shall assume and bear all cost 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.

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

DATED: *22 November*, 2000
Rochester, New York



DONALD CHERR, M.D.
Chairperson

JOSEPH GEARY, M.D.
D. MARISA FINN

APPENDIX I

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

IN THE MATTER
OF
JOSEPH N. CHARLES, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: JOSEPH N. CHARLES, M.D.
440 East 19th Street, 2nd Floor
Brooklyn, New York 11226

JOSEPH N. CHARLES, M.D.
752 Lincoln Avenue
Brooklyn, New York 11208

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 19th day of July, 2000 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 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.

EXHIBIT

If you intend to present sworn testimony, the number of witnesses 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, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 10, 2000.

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 July 10, 2000 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

June 27, 2000

Peter D. Van Buren

PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

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

IN THE MATTER
OF
JOSEPH N. CHARLES, M.D.

STATEMENT
OF
CHARGES

JOSEPH N. CHARLES, M.D., the Respondent, was authorized to practice medicine in New York state on April 3, 1972, by the issuance of license number 111981 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about January 7, 2000, in the United States District Court, Eastern District of New York, Respondent was found guilty of nine (9) felony counts of Payment of Medicaid Kickbacks in violation of 42 U.S.C. §1320a-7b(b)(2)(B), and was sentenced to five (5) months imprisonment, \$22,000.00 restitution, a \$900.00 assessment, and upon release from imprisonment two (2) years supervised release and five (5) months home confinement.

SPECIFICATION

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

1. The facts in paragraphs A.

DATED: *June 27*, 2000
Albany, New York


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