



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 9, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Jayendra A. Shah, M.D.
7960 W. McFadden Avenue
Westminster, California 92683

Jayendra A. Shah, M.D.
P.O. Box 9559
Anaheim, California 92812

RE: In the Matter of Jayendra A. Shah, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-306) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

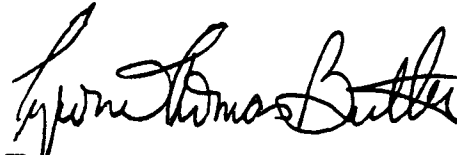
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

COPY

IN THE MATTER
OF
JAYENDRA A. SHAH, M.D.

DETERMINATION

AND

ORDER

BPMC #00-306

A Commissioner's Order, dated June 6, 1998, and a Notice of Summary Hearing and Statement of Charges both dated October 6, 2000, were served upon the Respondent, **JAYENDRA A. SHAH, M.D.**

ARSENIO G. AGOPOVICH, M.D., Chairperson, **TERESA S. BRIGGS, M.D.** and **SR. MARY THERESA MURPHY**, 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 2, 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 failed to appear.

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)(d). A copy of the Commissioner's Order and Notice of Hearing 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 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. JAYENDRA A. SHAH, M.D., the Respondent, was authorized to practice medicine in New York State on October 31, 1975, by the issuance of license number 125819 by the New York State Education Department. (Pet's Ex. 4)

2. On June 28, 1999, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision and Order (hereinafter "California Order"), revoked the Respondent's certificate to practice medicine, stayed the revocation, placed him on thirty (30) months probation, and imposed conditions that include that he initiate bi-monthly psychotherapy with a psychiatrist, employ a practice monitor, submit quarterly reports, reimburse the California Board \$12,000.00, and pay \$2,304.00 per year for costs of probation, based upon Respondent's making of threatening statements, dishonest and corrupt acts (commission of perjury), incompetence, and impairment due to mental illness. (Pet's Ex. 5)

3. By ORDER, dated June 26, 1998, "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 the duly authorized professional disciplinary agency of another jurisdiction (the State of California) has made a finding substantially equivalent to a finding that the unrestricted practice of medicine by JAYENDRA ARVINDLAL SHAH (the Respondent)[New York State license number 125819 issued October 31, 1975] in that jurisdiction constitutes an imminent danger to the health of its people, as is more fully set forth in the Orders, dated January 30, 1998 (Interim Order of Suspension – Appendix "A", attached and incorporated) and October 1, 1997 (Interim Order of Suspension (ex parte application) – Appendix "B", attached and incorporated) of the Medical Board of California."

The Commissioner, "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:

- Until and unless he submits to the Director of the Office of Professional Medical Conduct a proposed written Plan of Compliance, fully addressing the requirements set forth in Appendix "C", attached hereto; and
- Until and unless the Director approves such plan, in writing, as sufficient to address such requirements; and
- Until and unless such plan is fully operational, as determined by the Director in her reasonable discretion, and communicated to Respondent in writing.

Any violation of any term of this (Commissioner's) Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29). Any medical practice in the State of New York in violation of said Order 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 thirty (30) days after the final conclusion of the disciplinary proceedings in the State of California. 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 medical 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 after the California proceedings are finally concluded.***"

(Pet's Ex. 1)

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(5) (incompetence on more than one occasion);
- New York Education Law §6530(7) (practicing while impaired by mental disability);

- New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations;
- New York Education Law §6530(20) (moral unfitness); and/or
- New York Education Law §6530(21) (making a false report).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by reason of having had his license to practice medicine revoked 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 revocation or other 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 Respondent did not appear at the instant hearing nor did he submit any evidence in mitigation of the very serious charges against him.

The Hearing Committee determines that the Respondent's license to practice medicine in the State of New York should be REVOKED.

ORDER

IT IS HEREBY ORDERED THAT:

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

DATED: *Nov. 7*, 2000
TROY, New York



ARSENIO G. AGOPOVICH, M.D.
Chairperson

Teresa S. Briggs, M.D.

Sr. Mary Theresa Murphy

APPENDIX I

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

IN THE MATTER

OF

JAYENDRA A. SHAH, M.D.

NOTICE
OF
SUMMARY
REFERRAL
HEARING

TO: JAYENDRA A. SHAH, M.D.
7960 W. Mc Fadden Avenue
Westminster, CA 92683

JAYENDRA A. SHAH, M.D.
P.O. Box 9559
Anaheim, CA 92812

PLEASE TAKE NOTICE THAT:

Pursuant to a Commissioner's Summary Order dated June 26, 1998, which is attached hereto as Exhibit A, 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 2 day of November, 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

J. E. V.

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, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 23, 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 or 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 October 23, 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 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 the State 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

Oct. 6, 2000



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

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

IN THE MATTER
OF
JAYENDRA ARVINDLAL SHAH, M.D.

COMMISSIONER'S
SUMMARY
ORDER

TO: JAYENDRA ARVINDLAL SHAH, M.D.
7960 W. McFadden Avenue
Westminster, California 92683

P.O. Box 9559
Anaheim, CA 92812

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 the duly authorized professional disciplinary agency of another jurisdiction (the State of California) has made a finding substantially equivalent to a finding that the unrestricted practice of medicine by JAYENDRA ARVINDLAL SHAH (the Respondent) [New York State License number 125819 issued October 31, 1975 in that jurisdiction constitutes an imminent danger to the health of its people, as is more fully set forth in the Orders, dated January 30, 1998 (Interim Order of Suspension - Appendix "A", attached and incorporated) and October 1, 1997 (Interim Order of Suspension (ex parte application) - Appendix "B", attached and incorporated) of the Medical Board of California.

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

- Until and unless he submits to the Director of the Office of

Professional Medical Conduct a proposed written Plan of Compliance, fully addressing the requirements set forth in Appendix "C", attached hereto; and

- Until and unless the Director approves such plan, in writing, as sufficient to address such requirements; and
- Until and unless such plan is fully operational, as determined by the Director in her reasonable discretion, and communicated to Respondent in writing.


Any violation of any term of this (Commissioner's) Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29). Any medical practice in the State of New York in violation of said Order 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 thirty days after the final conclusion of the disciplinary proceeding in the State of California. 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 after the California proceedings are finally concluded. 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 notify both the attorney whose name is set forth in this Order, and the Director of the Bureau of Adjudication, New York State Department of Health, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180 (Telephone: 518-402-0748).

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
June 6, 1998


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

Inquiries should be directed to:

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

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

IN THE MATTER
OF
JAYENDRA A. SHAH, M.D.

STATEMENT
OF
CHARGES

JAYENDRA A. SHAH, M.D., the Respondent, was authorized to practice medicine in New York state on October 31, 1975, by the issuance of license number 125819 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 28, 1999, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision and Order (hereinafter "California Order"), revoked the Respondent's certificate to practice medicine, stayed the revocation, placed him on thirty (30) months probation, and imposed conditions that include that he initiate bi-monthly psychotherapy with a psychiatrist, employ a practice monitor, submit quarterly reports, reimburse the California Board \$12,000.00, and pay \$2,304.00 per year for costs of probation, based upon Respondent's making of threatening statements, dishonest and corrupt acts (commission of perjury), incompetence, and impairment due to mental illness.

B. The conduct resulting in the California Board's 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(5) (incompetence on more than one occasion);
2. New York Education Law §6530(7) (practicing while impaired by mental disability);
3. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations);
4. New York Education Law §6530(20) (moral unfitness); and/or
5. New York Education Law §6530(21) (making a false report).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by reason of having had his license to practice medicine revoked 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 revocation or other disciplinary action, 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.

DATED: *Oct 6*, 2000
Albany, New York



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

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 of Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding. Pursuant to Public Health Law §230, the Notice of Hearing must, additionally, specify that the licensee shall file a written answer.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer or Responsive Pleading. A party may serve an answer or response to the allegations of the Department. In matters governed by PHL §230, the licensee is required to file a written answer to each of the charges and allegations of the Department. Under the law, any charge or allegation which is not so answered shall be deemed admitted.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, document or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure of a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as is practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any

time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of the claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer or Hearing Committee Report. The report or determination should be submitted within 60 days of completion of the hearing.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order any party may submit exceptions to said report and proposed order

to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed. Pursuant to PHL 230(c), a notice of request for review of the Hearing Committee determination must be served upon the ARB within 14 days of service of the determination. All parties have 30 days thereafter to submit briefs and 7 days from service of a brief to submit a reply.

51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

51.16 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York
March 20, 1997


HENRY M. GREENBERG
General Counsel