



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

March 27, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
433 River Street – Fourth Floor
Troy, New York 12180

Amy T. Kulb, Esq.
Jacobson and Goldberg, LLP
585 Stewart Avenue
Garden City, New York 11530

Darshan T. Shah, M.D.
238 Brookville Road
Muttontown, New York 11545

Darshan T. Shah, M.D.
796F Drew Street
Brooklyn, New York 11208

RE: In the Matter of Darshan T. Shah, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-93) 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.

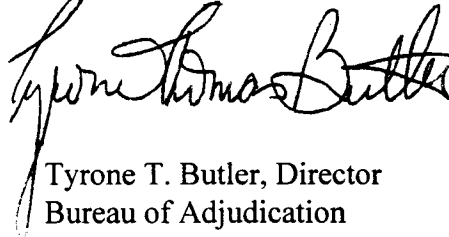
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
OF
DARSHAN T. SHAH, M.D.

DECISION

AND

ORDER

BPMC-00-93

A Notice of Referral Proceedings and Statement of Charges, both dated December 9, 1999, were served upon the Respondent, **DARSHAN T. SHAH, M.D.**

JOHN CHOATE, M.D., Chairperson, **CHARLES J. VACANTI, M.D.** and **JAMES MILSTEIN, J.D.**, duly designed 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 February 17, 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 **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **JACOBSON AND GOLDBERG, LLP**, 585 Stewart Avenue, Garden City, New York, 11530, **AMY T. KULB, ESQ.**, of Counsel.

Evidence was received and transcripts of these proceeding 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 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 is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Respondent

None

For the Petitioner

Darshan T. Shah, M.D., the Respondent
A.B. Whitfield
Joseph Jeffries-El
Elizabeth Sanders
Diane Gordon
Burton Schoenbach

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page number 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 stated.

1. **DARSHAN T. SHAH, M.D.**, the Respondent, was authorized to practice medicine in New York State on September 24, 1976 by the issuance of license number 128759 by the New York State Education Department. (Pet's. Ex. 4)

2. On December 1, 1998, in the United States District Court, Southern District of New York, the Respondent was found guilty of one (1) count of receipt of kickbacks, in violation of Title 42, United States Code §1320(a) and one (1) count of mail fraud in violation of Title 18 United States Code §1341. He was sentenced on April 30, 1999, to two (2) years probation, six (6) months of said probation to be served in home confinement; a \$50,000.00 fine; and restitution in amount \$6,489.60. (Pet's. Ex. 5)

VOTE OF THE HEARING COMMITTEE (All votes were unanimous unless otherwise specified)

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 evidence in this case indicates that the Respondent was found guilty in federal court in 1998 of one (1) count of receipt of kickbacks and one (1) count of mail fraud. He was sentenced to two (2) years probation, six months of said probation to be served in home confinement; he was fined Fifty Thousand (\$50,000.00) Dollars and was ordered to make restitution in the amount of \$6,489.60.

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:

1. The charges against the Respondent do not reflect on his technical competence as a physician.
2. The Respondent has practiced medicine in the East New York section of Brooklyn for over twenty (20) years and he is the only cardiologist in private practice in that community.
3. The Respondent enjoys the reputation of being an excellent physician with many years of service in a socio-economically deprived and undeserved community with patients who were often unable to pay.
4. The Respondent has contributed his time and financial assistance to a wide range of community programs.

The Hearing Committee determines that the appropriate penalty in this case would be a five (5) years suspension, stay all but the first six (6) months of said suspension; place the Respondent on probation under terms and conditions hereinafter specified in the ORDER.

In addition, the Respondent should be required to perform 500 hours of Community Service and pay a penalty in the amount of Ten Thousand (\$10,000.00) Dollars.

ORDER

THEREFORE: IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for five (5) years, suspension **STAYED** for all but the first six (6) months of the suspension period. During the those six months of suspension, the Respondent's license to practice medicine shall be limited, and he may engage in practice only to fulfil the requirement of 500 hours of community service as imposed by this ORDER.

2. The Respondent is placed on probation for a period of **FIVE YEARS** 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 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 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, 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 requests 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. A civil penalty in the amount of Ten Thousand (\$10,000.00) Dollars is assessed against the Respondent. Payment of the civil penalty shall be due within 60 days of the effective date of this ORDER.

The Respondent shall make payment to the Bureau of Accounts Management, New York Department of Health, Erastus Corning Tower Building, Room 1245, Empire State Plaza, Albany, New York 12237.

Any civil penalty not paid by the prescribed date 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 that imposition of interest, late payment charges and collection, and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).

4. Respondent shall perform 500 hours of community service. The service must be medical in nature, and delivered in a facility or with an organization equipped to provide medical services and serving a needy or medically undeserved population. A written proposal for community service must be submitted to, and is subject to a written approval of the Director of OPMC. Community service performed prior to written approval shall not be credited toward compliance with this Order.

5. The Respondent shall comply with all of the terms and conditions of probation 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 probation.

6. 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.

7. 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: ALBANY, New York
3/22, 2000



JOHN CHOATE, M.D.
Chairperson

CHARLES J. VACANTI, M.D.
JAMES MILSTEIN, J.D.

APPENDIX I



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

**IN THE MATTER
OF
DARSHAN T. SHAH, M.D.**

NOTICE
OF
REFERRAL
PROCEEDING

TO: DARSHAN T. SHAH, M.D.
238 Brookville Road
Muttontown, New York 11545

DARSHAN T. SHAH, M.D.
796F Drew Street
Brooklyn, New York 11208

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 January, 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.

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 12180, 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 January 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 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 January 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
December 9, 1999
December



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, NY 12180
(518)402-0820

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

-----X
IN THE MATTER
OF
DARSHAN T. SHAH, M.D.

STATEMENT
OF
CHARGES

-----X
DARSHAN T. SHAH, M.D., the Respondent, was authorized to practice medicine in New York State on September 24, 1976 by the issuance of license number 128759 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 1, 1998, in the United States District Court, Southern District of New York, Respondent was found guilty one (1) count of receipt of kickbacks, in violation of Title 42, United States Code §1320(a) and two (2) counts of mail fraud in violation of Title 18 United States Code §1341, and was sentenced on or about April 30, 1999, to two (2) years probation, six (6) months of the probation to be served in home confinement, a \$50,000.00 fine, and restitution in the amount of \$6,489.60.

SPECIFICATION

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

1. The facts in paragraphs A.

DATED: *Dec. 9*, 1999
Albany, New York

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