



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

April 11, 1995

RECEIVED
APR 13 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph M. Piacentile, M.D.
1604 Haight Avenue
Bronx, New York 10469

Wood & Scher
William L. Wood, Esq.
The Harwood Building
14 Harwood Court
Scarsdale, New York 10583

Terrence Sheehan, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza-Sixth Floor
New York, New York 10001

RE: In the Matter of Joseph M. Piacentile, M.D.

Dear Dr. Piacentile, Mr. Wood and Mr. Sheehan:

Enclosed please find the Determination and Order (No. 95-84) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

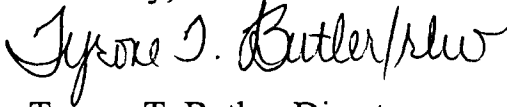
All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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**

**IN THE MATTER
OF
JOSEPH M. PIACENTILE, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-95-84

THOMAS SINATRA, M.D., (Chair), **EDWARD ZAINO, M.D.** and **KENNETH KOWALD** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230 of the Public Health Law of the State of New York.

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

The Department of Health appeared by **TERRENCE SHEEHAN, ESQ.**, Associate Counsel.

Respondent, **JOSEPH M. PIACENTILE, M.D.**, appeared personally and was represented by **WOOD & SCHER**, by **WILLIAM L. WOOD, ESQ.**, of counsel.

A hearing was held on March 1, 1995. Evidence was received and examined, witnesses were sworn or affirmed and examined. A transcript of the proceeding was made. After consideration of the entire 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).

JOSEPH M. PIACENTILE, M.D., (hereinafter "Respondent") is charged with two (2) specifications of professional misconduct within the meaning of §6530(9)(a)(ii) of the Education Law of the State of New York ("Education Law"), to wit: professional misconduct ... by reason of being convicted of committing an act constituting a crime under Federal Law (Petitioner's Exhibit # 1 and §6530[9][a][ii] of the Education Law).

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

PROCEDURAL HISTORY

Date of Notice of Referral Proceeding and
Statement of Charges:

December 7, 1994

Hearing Held:

March 1, 1995

¹ P.H.L. §230(10)(p), fifth sentence.

Witnesses called by the Petitioner,
Department of Health:

None

Witnesses called by the Respondent,
Joseph M. Piacentile, M.D.:

Charles Ciolino, M.D.
Neil Berliner, M.D.
Victor Piacentile, Esq.
Jonathan Khan
Darcie Piacentile
Joseph M. Piacentile, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence or testimony, if any, was considered and rejected in favor of the cited evidence. Some evidence and testimony was rejected as irrelevant. Unless otherwise noted, 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 July 1, 1982 by the issuance of license number 150653 by the New York State Education Department (Petitioner's Exhibit # 1)².

² Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Dr. Joseph M. Piacentile (Respondent's Exhibit).

2. Respondent was last registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 (Petitioner's Exhibit # 1).

3. Ron Stein unsuccessfully attempted to personally serve Respondent with a Notice of Referral Proceeding and a Statement of Charges on 5 separate occasions in December, 1994 (Petitioner's Exhibit # 1).

4. Respondent personally appeared at the adjourned scheduled hearing, was represented by counsel, waived service and consented to jurisdiction of the State Board for Professional Medical Conduct [T-16]³.

5. The United States of America through the United States Attorney in the Southern District of New York filed an information (91 Cr. 464)⁴ charging Respondent, and one other individual, with violations of Federal Laws (Petitioner's Exhibit # 2).

6. The information charged and alleged that Respondent, together with one other individual, "unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to commit an offense...to violate Title 18, United States Code, §1001, by submitting altered and false claims to Medicare for reimbursement..." (Petitioner's Exhibit # 2).

7. The information also charged and alleged that Respondent wilfully attempted to evade the payment of federal income tax for 1985 by preparing, signing and filing a false and fraudulent U.S. Individual Income Tax return, in violation of Title 26, United States Code, §7201 (Petitioner's Exhibit # 2).

³ Numbers in brackets refer to transcript page numbers [T-].

⁴ Respondent waived his Constitutional right to an indictment by a grand jury, on May 30, 1991 (Petitioner's Exhibit # 3).

8. As a result of said information, on May 30, 1991, Respondent plead guilty as follows:

Conspiracy	:	Count # 1, ⁵ and
Tax Evasion	:	Count # 3 ⁶

(Petitioner's Exhibit # 3).

9. As a result of said plea of guilty, Respondent was sentenced, on September 23, 1994, as follows:

Count 1: "imposition of sentence is suspended and defendant⁷ is placed on probation for three years" to run concurrently with the term imposed under Count 3.

Count 3: " the defendant is committed to the custody of the Attorney General or her designated representative for a term of three years, but on condition that six months be served on 60 consecutive 48-hour periods commencing at [8:00 a.m. on Saturdays through 8:00 a.m. Mondays], in the community corrections component, as designated by the Bureau of Prisons. Then the balance of that custody term will be suspended and the defendant placed on probation for 33 months." In addition, Respondent was also required to perform 200 hours of community service for each of the three years on probation, for a total of 600 hours of community service and a \$900,000 consent judgment was entered against Respondent (Petitioner's Exhibit # 5).

10. Respondent admits that he plead guilty to conspiracy to submit false Medicare claim and to income tax evasion (Respondent's Exhibit # A); [T-158-168].

⁵ Title 18, United States Code §371, Conspiracy to commit offense or to defraud United States.

⁶ Title 26, United States Code §7201.

⁷ Respondent herein.

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 following Factual Allegations, from the December 7, 1994 Statement of Charges, are SUSTAINED⁸:

FIRST SPECIFICATION, Paragraph 1 : (5 - 10)

SECOND SPECIFICATION, Paragraph 2 : (5 - 10)

The Hearing Committee further concludes, based on the above Factual Conclusion, that the FIRST AND SECOND SPECIFICATIONS listed in the Statement of Charges are SUSTAINED.

I Professional Misconduct under §6530(9)(a)(ii) of the N.Y.S. 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.

⁸ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

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 suspended for three (3) years, with that suspension stayed under the following conditions:

1. Respondent should be placed on probation for three (3) years, and
2. Respondent should perform 500 hours of public service⁹ during his probation, as set forth in the annexed and incorporated Terms of Probation, and
3. Respondent should comply with the Federal sentence given to him on September 23, 1994 by District Court Judge Charles S. Haight, Jr. (See Finding of Fact # 9 above).

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 acts constituting crimes under Federal Law. Respondent was convicted of significant crimes and was given a lengthy prison sentence (more than one year of weekends in custody).

⁹ This 500 hours is in addition to the 600 hours sentence required by the United States District Court, Southern District, under Index No. 91-464.

Respondent's conduct is indicative of some deficient moral character and judgment which can not be ignored under these circumstances.

The Hearing Committee does acknowledge and specifically states that there was no issue or complaint in this matter regarding the quality of care provided by Respondent to any patients.

Respondent's conduct in other aspects of his life appears to have been more forthright as indicated by the various individuals who appeared on his behalf. The Hearing Committee believes that community service, with an emphasis on the homeless and/or Aids patients, will better benefit society than a revocation of Respondent's license.

The Hearing Committee does consider Respondent's misconduct to be very serious. With a view and concern for the health and welfare of patients in New York State, as well as our taxpayers, the Hearing Committee determines that the above penalty is the appropriate sanction to impose under the circumstances.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

ORDER

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

1. The First and Second Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**, and
2. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of three (3) years from the effective date of this Determination and Order, and
3. Respondent's three (3) year **SUSPENSION IS STAYED**, as long as Respondent complies with the terms of probation, and
4. Respondent is placed on **PROBATION** for a period of **THREE (3) YEARS** from the effective date of this Determination and Order and must comply with the terms of probation contained in Appendix II, and
5. Respondent shall provide proof of completion of the Federal sentence given to him on September 23, 1994 by District Court Judge Charles S. Haight, Jr., including the performance of 600 hours of community service, and
6. Respondent shall perform a separate and additional 500 hours of public service during his probation, as set forth in the annexed and incorporated Terms of Probation.

DATED: Albany, New York
April 6, 1995


THOMAS SINATRA, M.D., (Chair)

**EDWARD ZAINO, M.D.
KENNETH KOWALD**

To: Joseph M. Piacentile, M.D.
1604 Haight Avenue
Bronx, NY 10469

Wood & Scher
William L. Wood, Esq.
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14 Harwood Court
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Terrence Sheehan, Esq.
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

A P P E N D I X I

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JOSEPH M. PIACENTILE, M.D. : CHARGES
-----X

JOSEPH M. PIACENTILE, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1982 by the issuance of license number 150653 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 at 578 Big Oak Road, Yardley, Pa. 19067-0000.

FIRST SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(ii) (McKinney Supp. 1994), in that he was convicted of committing an act constituting a crime under federal law. Specifically, Petitioner charges:

1. On or about May 30, 1991, Respondent pled guilty to the crime of conspiracy to submit false Medicare claims. In or

about the period 1984 through 1987. Respondent, and his company Electro Therapeutics, Inc., submitted to Medicare \$1,100,000 in materially false claims for reimbursement for TENS accessory kits, an electric pain control device.

On or about September 23, 1994, Respondent was sentenced to three years probation; required to perform 600 hours of unpaid community service, and required to consent to the filing of a \$900,000 judgment against him, in favor of the United States government.

SECOND SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(ii) (McKinney Supp. 1994), in that he was convicted of committing an act constituting a crime under federal law. Specifically, Petitioner charges:

2. On or about May 30, 1991, Respondent pled guilty to the crime of income tax evasion. For the calendar year 1985, Respondent falsely stated in his U.S. individual income tax return that his taxable income and tax due were \$52,988 and \$8,871, respectively, when, in fact, his taxable income and tax due were \$334,196 and \$153,630, respectively.

On or about September 23 1984, Respondent was sentenced to three years imprisonment on the condition that Respondent serve in prison sixty (60) consecutive 48-hour weekend periods with the balance of the custody term suspended and Respondent placed on probation for thirty-three (33) months.

DATED: New York, New York

December 7, 1984



CHRIS STERN HYMAN
COUNSEL

Bureau of Professional Medical
Conduct

A P P E N D I X I I

TERMS OF PROBATION

1. Respondent shall conduct himself at all times in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

4. Respondent shall submit written notification to the OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

5. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. The probation periods shall

be tolled until the Respondent returns to practice in New York State.

6. Respondent shall have quarterly meetings with an employee or designee of OPMC during the periods of probation. In these quarterly meetings, Respondent's professional performance may be reviewed by inspecting selections of office records, patient records and hospital charts.

7. Respondent shall submit semi-annual declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the OPMC at the address indicated above.

8. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice medicine as a physician in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

9. Respondent shall provide proof of completion of the Federal sentence given to him on September 23, 1994 by District Court Judge Charles S. Haight, Jr., including the performance of 600 hours of community service.

10. Respondent shall perform a separate and additional 500 hours of public service during his probation with an emphasis on the homeless and/or Aids patients, or with an organization serving a needy or medically under served

population. These hours of public or community service shall be performed within the State of New York, at the rate of at least five (5) hours per week, until completed. The services must be medical in nature.

11. Respondent shall submit a written proposal to the Director of the OPMC for approval of the public or community service setting.

12. Respondent may not practice medicine until the public or community service setting is approved by the OPMC. After 30 days from the effective date of the Determination and Order, any practice of medicine prior to the submission and approval of a proposed public or community service setting will be considered a violation of probation.

13. Public or community service performed prior to the effective date of the Determination and Order will not be credited for compliance with these Terms of Probation.

14. Public or community service performed under the Federal Sentence will not be credit for compliance with these Terms of Probation.

15. Respondent will advise and obtain approval from the OPMC of any proposed change in settings over the period of probation.

16. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.

17. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.