



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning 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

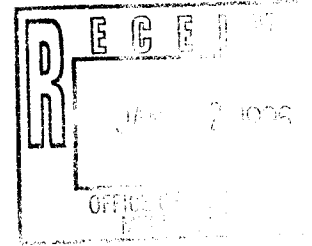
January 2, 1996

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Harshad Bhatt, M.D.  
9454 Lefferts Boulevard  
Richmond Hill, New York 11419

**RE: In the Matter of Harshad Bhatt, M.D.**



Dear Ms. Abeloff and Dr. Bhatt:

Enclosed please find the Determination and Order (No. 95-316) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent "T" at the beginning.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
OF :  
HARSHAD BHATT, M.D. : ORDER  
-----X

BPMC-95-316

A Notice of Referral Proceeding and Statement of Charges, both dated August 18, 1995, were served upon the Respondent, Harshad Bhatt, M.D. **STEPHEN A. GETTINGER, M.D. (Chair), RALPH LEVY, D.O., and RANDOLPH MANNING,** 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Dianne Abeloff, Esq., Associate Counsel. The Respondent appeared by Jacobson & Goldberg, Amy T. Kulb, Esq., of Counsel. A hearing was held on November 8, 1995. Evidence was received and witnesses sworn and heard 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 §6530(9). In such cases, 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i) [having been convicted of committing an act constituting a crime under New York state law]. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### 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.

1. Harshad Bhatt, M.D. (hereinafter, "Respondent"), was

authorized to practice medicine in New York State on March 11, 1983 by the issuance of license number 153340 by the New York State Education Department. (Pet. Ex. #2).

2. On or about May 17, 1994, Respondent was convicted upon a guilty plea in Supreme Court, Queens County, of one count of insurance fraud in the fourth degree, a Class E felony, in violation of N.Y. Penal Law §176.15. Respondent pled guilty to one count of an 111 count indictment. (Pet. Ex. #3 and #4).

3. Respondent admitted that on or about December 26, 1991 through on or about March 27, 1992, he knowingly submitted a false Medicare claim form to GHI Insurance Company, as carrier for the U.S. government, for charges of \$34,037.77, in which Respondent claimed that he had performed a bipolar prosthesis of the right hip on patient L.Y. at St. John's Hospital on November 27, 1992. In fact, Respondent knew that he had never performed the surgery, and was actually paid \$14,073.78 by GHI. (Pet. Ex. #3 and #4).

4. On or about July 12, 1994, Respondent was sentenced to a five year period of probation, a \$10,000 fine, restitution of \$36,451.54 and a \$5 crime victim fee. (Pet. Ex. #5 and #6).

5. Respondent has made full payment of the restitution and fines ordered by the Court. (Resp. Ex. C and D).

6. Respondent, a board certified orthopedic surgeon, testified that he maintained a very busy practice, seeing patients at five hospitals, two nursing homes and two clinics. On October 21, 1989, Respondent's son was seriously injured in an automobile accident, resulting in partial paralysis. Respondent

testified that over the next nine months, his medical practice became chaotic, as he attempted to care for his son, and maintain the practice. He stated that he kept no real records during that period, and did not issue any bills for services rendered. In December, 1991, Respondent prepared and submitted hundreds of bills for insurance reimbursement in one night. He admitted that approximately twenty-seven of the bills were fraudulently submitted. (T70-78; Resp. Ex. B).

#### CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that on May 17, 1994, Respondent was convicted, upon a guilty plea, of one count of insurance fraud in the fourth degree, (a Class E felony), in violation of New York Penal Law §176.15. Accordingly, the Committee voted to sustain the First Specification of professional misconduct contained in the Statement of Charges.

#### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended for a period of three years. The suspension

shall be stayed, and Respondent placed on probation for a period of five years. As a condition of probation, Respondent shall be required to retain, at his own expense, a certified public accountant, acceptable to the Office of Professional Medical Conduct, to monitor Respondent's billing practices for compliance with state and federal laws and regulations. A complete listing of the terms of probation is contained in Appendix II, which is attached to this Determination and Order and incorporated herein. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee considers Respondent's misconduct to be quite serious. Respondent admitted guilt to one count of insurance fraud in satisfaction of an 111 count indictment. Under most circumstances, Respondent's conduct might warrant the most severe sanction. However, the Hearing Committee gave credence to Respondent's testimony as to the extreme circumstances under which he submitted the false bills. Moreover, the Committee directly assessed Respondent's demeanor and was satisfied that he was genuinely remorseful regarding his past misdeeds.

Additionally, the Hearing Committee gave weight to the strong testimony in support of Respondent provided by Henry Marano, M.D., the chief of orthopedic surgery at St. Joseph's Hospital of Catholic Medical Center, as well as the testimony of Philip Taylor, M.D., director of orthopedics at St. Mary's



Hospital of Catholic Medical Center. Both testified as to Respondent's surgical skills, his teaching abilities and his willingness to provide surgical services in areas of New York City which are underserved. The Committee also considered the numerous letters of support submitted on Respondent's behalf.

Taking all of the above-mentioned factors into consideration, the Hearing Committee determined that revocation was not warranted. Instead, the Committee voted to impose a period of stayed suspension, coupled with a term of probation. As a condition of probation, Respondent shall be required to retain the services of a certified public accountant, to monitor his billing practices in order to determine compliance with all applicable state and federal laws and regulations. The Hearing Committee specifically considered and rejected the imposition of a practice monitor on Respondent as a further condition of probation. No allegations have been raised regarding Respondent's surgical skills. Thus a practice monitor would be superfluous.

The Hearing Committee unanimously concluded that a three year stayed suspension, combined with a five year term of probation, as described above, strikes the appropriate balance between the need to punish Respondent, deter future misconduct, and protect the public.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is SUSPENDED for a period of THREE YEARS. The suspension shall be STAYED and Respondent place on PROBATION for a period of FIVE YEARS commencing upon the effective date of this Determination and Order. The complete terms of probation are contained in Appendix II, which is attached to this Determination and Order and incorporated herein.

DATED: Albany, New York  
Dec 28, 1996

  
STEPHEN A. GETTINGER, M.D. (CHAIR)

RALPH LEVY, D.O.  
RANDOLPH MANNING

TO: Dianne Abeloff, Esq.  
Associate Counsel  
New York State Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001

Harshad Bhatt, M.D.  
9454 Lefferts Boulevard  
Richmond Hill, New York 11419

Amy T. Kulb, Esq.  
Jacobson & Goldberg  
585 Stewart Avenue - Suite 720  
Garden City, New York 11530

APPENDIX I

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

IN THE MATTER  
OF  
HARSHAD BHATT, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: HARSHAD BHATT, M.D. aka HARSHADRAI CHIMANLAL BHATT, M.D.  
9454 Lefferts Boulevard  
Richmond Hill, N.Y. 11419

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on September 21, 1995, 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. 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (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.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to 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.

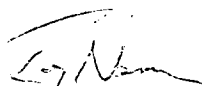
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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  
*August 18, 1995*



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2615

**IN THE MATTER  
OF  
HARSHAD BHATT, M.D.**

**STATEMENT  
OF  
CHARGES**

HARSHAD BHATT, M.D., aka HARSHADRAI CHIMANLAL BHATT, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 11, 1983, by the issuance of license number 153340 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about May 17, 1994, Respondent was convicted upon a guilty plea in the Supreme Court of the State of New York, Criminal Term, Queens County, of one count of Insurance Fraud in the Fourth Degree, an E Felony, in violation of N.Y. Penal Law Sec.176.15 in that on or about December 26, 1991 through on or about March 27, 1992, in Queens County, Respondent, with intent to defraud the U.S. government, knowingly submitted a false Medicare claim form to GHI Insurance Company, as carrier for the U.S. Government, for charges of \$34,037.77, in which Respondent claimed that he had performed a bipolar prosthesis of the right hip on patient L.Y. at St. John's Hospital on November 27, 1992, when he knew that he had never performed the surgery, and was actually paid \$14,073.78 by GHI . On or about July 12, 1994, Respondent was sentenced to a five year period of probation, a \$10,000 fine, restitution to the U.S. Government of \$36,451.54, and a \$5 crime victim fee.



**SPECIFICATION OF CHARGES**

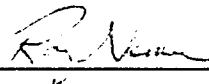
**FIRST SPECIFICATION**

**NEW YORK STATE CRIMINAL CONVICTION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(i)(McKinney Supp. 1995) by having been convicted of committing an act constituting a crime under New York state law, as alleged in the following:

1. Paragraph A.

DATED: August 18, 1995  
New York, New York



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

APPENDIX II

APPENDIX II  
TERMS OF PROBATION

1. Dr. Bhatt 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 imposed by law and by his profession.

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

3. Dr. Bhatt shall submit prompt written notification to the Board addressed to the Director, office of Professional Medical conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Dr. Bhatt leaves New York to reside or practice outside the State, Dr. Bhatt shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

5. Dr. Bhatt shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Bhatt's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.

6. Dr. Bhatt shall retain, at his own expense, a certified public accountant, acceptable to the director of the Office of Professional Medical Conduct. The certified public accountant shall monitor Respondent's billing practices on a quarterly basis to determine Respondent's compliance with all applicable federal and state statutes and regulations governing billing for medical services.

7. Dr. Bhatt shall submit quarterly 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 Office of Professional Medical Conduct at the address indicated above.

8. Dr. Bhatt shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Bhatt elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

9. If there is full compliance with every term set forth herein, Dr. Bhatt may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon 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 Dr. Bhatt pursuant to New York Public Health Law §230(19) or any other applicable laws.