



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

August 26, 1994

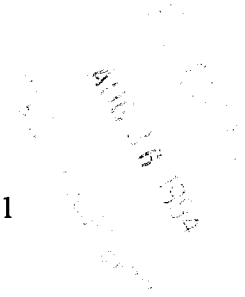
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Neil Brodsky, M.D.
501 East 87th Street, Apt. 11F
New York, New York 10028

David E. Ruck, Esq.
230 Park Avenue
Suite 2830
New York, New York 10169

David W. Smith, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Effective Date: 9/2/94



RE: In the Matter of Neil Brodsky, M.D.

Dear Dr. Brodsky, Mr. Ruck and Mr. Smith :

Enclosed please find the Determination and Order (No. 94-167) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he 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.

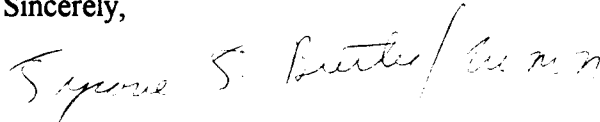
The notice of review served on the Administrative Review Board should be forwarded to:

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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style and is positioned above the typed name of the signatory.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
NEIL BRODSKY, M.D.**

DETERMINATION

AND

ORDER

No. BPMC-94-167

A Notice of Hearing and Statement of Charges, both dated March 21, 1994, were served upon the Respondent, Neil Brodsky, M.D. **STEVEN W. HORNYAK, M.D.** (Chair), **RAFAEL LOPEZ, M.D.**, and **CAROL LYNN HARRISON, Ph.D.**, 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. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on June 15, 1994. The Department of Health appeared by **DAVID W. SMITH, ESQ.**, Associate Counsel. Respondent was represented by **DAVID E. RUCK, ESQ.** 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 Section 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 Section 6530(9)(a)(i). 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. Respondent was authorized to practice medicine in New York State on September 19, 1989 by the issuance of license number 180013 by the New York State Education Department. (Pet. Ex. #2)

2. On September 2, 1993, in New York County Supreme Court, the Respondent pled guilty to falsifying business records, a felony, in the first degree in violation of Section 175.10 of the New York Penal Law, and was sentenced to a conditional discharge for a three year period to expire on November 18, 1996. (Pet.'s Ex. 6)

3. The indictment to which the Respondent pled guilty to stated that Respondent, while employed by New York City Health and Hospitals Corporation as a session physician, inserted false information on a sign-in sheet of the Emergency Room at Bellevue Hospital Center. This information falsely reflected that Respondent had performed services there from noon till midnight on April 3, 1991 when in fact Respondent knew that no such services had been performed. (Pet. Ex. 3).

CONCLUSIONS OF LAW

The following conclusion 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 unanimously concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates that Respondent was convicted of falsifying business records in the first degree in violation of the New York Penal Code. Education Law Section 6530(9)(a)(i) defines professional medical misconduct as " being convicted of committing an act constituting a crime under New York State law." As a result, the Hearing Committee voted to sustain the First Specification of professional misconduct contained within 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 should be censured and reprimanded for his misconduct in this instance. 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.

At the hearing, Respondent testified that at the time of the incident in question, he was suffering from "horrendous family pressures" to become a radiologist when his true desire was to practice internal medicine. (T. 38,40, 55) Respondent further testified that he is now more confident about working through his problems and that he will continue indefinitely under the treatment of Harold I. Kaplan, M.D. , a Professor of Psychiatry at NYU Medical Center. (Resp. Ex. A, T. 44,47) Respondent also offered the testimony of two character witnesses. Martin S. Begun, an Associate Dean of New York University Medical School and Vice President of the Medical

Center, testified that he had attempted to intervene with the Health and Hospital Corporation on behalf of the Respondent. (T. 14) Dean Begun also stated that he felt strongly that Respondent's professional misconduct in this instance was "aberrational, a once in a lifetime situation." (T. 18) The second witness was Lawrence Faltz, M.D., Chairman of Medicine at New York Hospital Medical Center of Queens and Program Director of the internal medicine residency program where Respondent is presently employed. (T. 25) Dr. Faltz testified that he hired the Respondent as his chief resident, with full knowledge of his criminal conviction, because Respondent has excellent academic and clinical skills. (T. 27) Dr. Faltz further testified that Respondent has demonstrated "superior character qualifications" in a stressful environment and is instrumental in the professional development of junior level residents under his supervision. (T. 28, 33)

The Hearing Committee believes that honesty is a requisite characteristic for a physician who is licensed to practice in New York State and Respondent's crime should not be minimized. However, the Hearing Committee has considered several factors which they believe preclude a harsh penalty in this instance. There can be no disagreement that Respondent is an exemplary physician with compassion and a superb fund of knowledge which will benefit the community for years to come. He, however, will be required to explain his felony conviction on every employment, licensure and academic application for the rest of his life. Respondent has acknowledged the source of his problem and the Hearing Committee believes that he will continue in therapy voluntarily as he recognizes that it is beneficial to his overall well being. The Hearing Committee feels that a stayed suspension with probation could serve no further purpose and would only impede Respondent's attempt to become board certified. Finally, the incident in question does not involve patient care, accordingly a lesser penalty should be imposed. Under the totality of the circumstances, the Hearing Committee determined that a censure and reprimand is the appropriate sanction.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and
2. Respondent is hereby **CENSURED** and **REPRIMANDED**.

DATED: Albany, New York

August 22, 1994


STEVEN W. HORNYAK, M.D.
Chairperson

RAFAEL LOPEZ, M.D.
CAROL LYNN HARRISON, Ph.D.

TO: David W. Smith, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza, 6th Floor
New York, New York 1000

David E. Ruck, Esq.
230 Park Avenue
Suite 2830
New York, NY 10169

Neil Brodsky, M.D.
501 East 87th Street Apt. 11F
New York, NY 10028

APPENDIX I

1
1

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: NEIL BRODSKY, M.D. : PROCEEDING
: -----X

TO: NEIL BRODSKY, M.D.
501 East 87th Street - Apt. 11F
New York, New York 10028

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 11th day of May, 1994 at 10 o'clock in the forenoon of that day at 5 Penn Plaza, 6th 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, on or before May 3, 1994 .

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 on or before May 3, 1994 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.

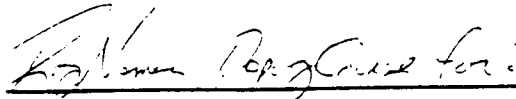
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior 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
March 21, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

DAVID W. SMITH
Associate Counsel
NYS Department of Health
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
212-613-2617

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

-----X

IN THE MATTER : STATEMENT
OF : OF
NEIL BRODSKY, M.D. : CHARGES

-----X

NEIL BRODSKY, M.D., the Respondent, was authorized to practice medicine in New York State on on September 19, 1989 by the issuance of license number 180013 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.

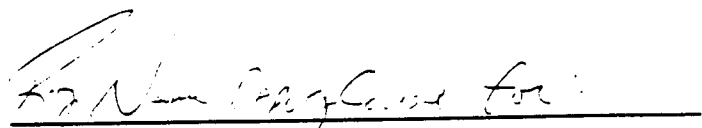
FIRST SPECIFICATION

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law, Section 6530(9)(a)(i) (McKinney Supp. 1994) by having been convicted of committing an act constituting a crime under New York State law in that:

On September 2, 1993, in Supreme Court, New York County, Respondent pleaded guilty to falsifying business records in the first degree in violation of Section 175.10 of the

New York Penal Law, a felony, in that while employed by the New York Health and Hospitals Corporation, he inserted false information in a sign-in sheet in the Emergency Room of Bellevue Hospital indicating he had worked from noon till midnight on April 3, 1991. He made restitution of money owed to HHC, was given a conditional discharge for a 3-year period ending November 18, 1996 and ordered to seek counseling.

DATED: New York, New York



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct