



# 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*

November 16, 1993

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jean Bresler, Esq.  
Associate Counsel  
New York State Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Joseph Fetto, M.D.  
530 First Avenue  
Suite 5B  
New York, New York 10016-6451

**RE: In the Matter of JOSEPH FETTO, M.D.**

Dear Ms. Bresler and Dr. Fetto:

Enclosed please find the Determination and Order (No. BPMC-93-189) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health  
Office of Professional Medical Conduct  
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 (p), 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.

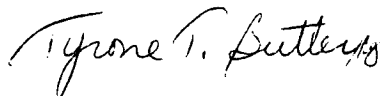
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Corning Tower -Room 2503  
Empire State Plaza  
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.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:rg  
Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
OF : AND  
JOSEPH FETTO, M.D. : ORDER  
-----X  
ORDER NO. BPMC-93-189

A Notice of Hearing and Statement of Charges, both dated August 12, 1993, were served upon the Respondent, Joseph Fetto, M.D. SUMNER SHAPIRO (Chair), JOHN H. MORTON, M.D., and JOHN L.S. HOLLOMAN, Jr., M.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. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. A hearing was held on October 6, 1993. The Department of Health appeared by Jean Bresler, Esq., Associate Counsel. The Respondent appeared *pro se*. 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. Joseph Fetto, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on July 1, 1975 by the issuance of license number 124320 by the New York State Education Department. 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 Suite 5B, 530 First Avenue, New York, New York 10016-6451. (Pet. Ex. #3).

2. On or about November 30, 1992, Respondent was convicted upon a plea of guilty, of one count of failure to file an income tax return, in violation of N.Y. Tax Law Section 1801(a), a misdemeanor. (Pet. Ex. #4).

3. Respondent was sentenced to a conditional discharge, 150 hours of community service and a fine of \$5,000. (Pet. Ex. #4).

4. Respondent testified that he has completed the required community service, has paid the \$5,000 fine and has a repayment schedule for the outstanding state income tax liability. (11).

#### **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 unanimously concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that on or about November 30, 1992, Respondent was convicted upon a plea of guilty, on one count of failure to file a state income tax refund. Therefore, Respondent stands convicted of a crime. As a result, the Hearing Committee voted to sustain the 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 receive a censure and reprimand. 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 takes notice of the fact that Respondent's crime did not occur within the context of his medical practice. The Committee also believes that Respondent is genuinely remorseful regarding his misconduct. (See, Tr., p. 12). Nevertheless, it is important that Respondent recognize that criminal conduct cannot be tolerated. Under the totality of the circumstances, the Hearing Committee determined that a censure and reprimand was the most appropriate sanction. Insofar as there have been no allegations of any defects in Respondent's medical practice, this sanction strikes an appropriate balance between the need to punish Respondent and protect the public.

**ORDER**

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is

**SUSTAINED;**

2. Respondent shall and hereby does receive a **CENSURE AND REPRIMAND.**

DATED: Albany, New York

*November 10* , 1993



**SUMNER SHAPIRO (Chair)**

JOHN H. MORTON, M.D.

JOHN L.S. HOLLOMAN, Jr., M.D.

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

Joseph Fetto, M.D.  
530 First Avenue  
Suite 5B  
New York, New York 10016-6451



APPENDIX I

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

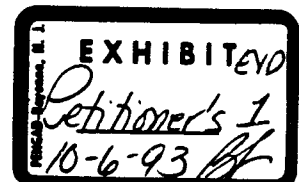
-----X  
: IN THE MATTER : NOTICE OF  
: OF : REFERRAL  
: JOSEPH FETTO, M.D. : PROCEEDING  
: :  
-----X

TO: JOSEPH FETTO, M.D.  
530 First Avenue  
Suite 5B  
New York, NY 10016-6451

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. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the Wednesday day of October 6, 1993 at 2:00 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: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 27, 1993 .

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 September 27, 1993 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

Aug 12, 1993



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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Jean Bresler  
Associate Counsel  
(212) 613-2601

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
Joseph Fetto, M.D. : CHARGES  
-----X

Joseph Fetto, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1975 by the issuance of license number 124320 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 Suite 5B, 530 First Avenue, New York, NY 10016-6451.

FIRST SPECIFICATION

- A. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a) (i) (McKinney Supp. 1993) in that he has been found guilty of committing an act constituting a crime under New York Law.
1. On or about November 30, 1992 the Respondent plead guilty to one count of failure to file an income tax return, in violation of N.Y. Law

Crimes and Forfeitures Sec. 1801(a), a  
misdemeanor.

2. Respondent was sentenced to a conditional discharge, 150 hours community service and a fine of \$5,000.

DATED: New York, New York

8/12/93

*Chris Stern Hyman for:*

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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional Medical  
Conduct