



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., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 7, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Abib B. Hindi, M.D.
123 Herman Street
Carteret, New Jersey 07008

Paul Robert Maher, Esq.
Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Hedley Park Place, 1st Floor
Troy, New York 12180-2299

RE: In the Matter of Abib B. Hindi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-242) 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 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 penalties other than suspension or revocation 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
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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh

Enclosure

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

COPY

IN THE MATTER
OF
ADIB B. HINDI, M.D.

DETERMINATION

AND

ORDER

OPMC No. 02-242

A Notice of Referral Proceeding and Statement of Charges, both dated February 27, 2001, were served upon the Respondent, **ADIB B. HINDI, M.D.** **SHARON KURITZKY, M.D.**, Chairperson, **JOEL H. PAULL, D.D.S., M.D., J.D.** and **MS. DEANNA KRUSENSTJERNA**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on July 18, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **PAUL ROBERT MAHER, ESQ.** and, **ROBERT BOGAN ESQ.**, of Counsel. The Respondent, although duly notified of the hearing, failed to appear.

Evidence was received 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, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (2), (3), (4), (5), (6), (11), (16), (19), (20), (21) and (25). 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 Petitioner:	None
For the Respondent:	None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to 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 specified.

1. **ADIB B. HINDI, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 30, 1973, by the issuance of license number 114870 by the New York State Education Department (Ex. 4).
2. On or about March 22, 2000, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, Board of Medical Examiners, (hereinafter "New Jersey Board"), by a Final Decision and Order, (hereinafter "New Jersey Order"), by approval of an Administrative Action Stipulation agree to by Respondent, accepted the permanent surrender of his license to practice medicine and deemed it a revocation, based upon, among other things:
 - His having allowed his name to appear as a principal or sole shareholder on documents of medical entities when these entities were owned and controlled by another person who was unlicensed as a medical professional;
 - his having allowed decisions regarding his medical services and those rendered by others, including the extent of physical examinations to be performed and the selection and order of diagnostic tests to be performed, to be determined by unlicensed persons;
 - His having allowed unlicensed persons to interpret test results without having examined the patients or their medical histories, and without having supervised the administration of the tests.

Respondent also agreed that the evidence properly supported findings that large numbers of medical services were claimed and billed in his name that he did not perform, and that his actions were illegal, highly improper and constituted gross negligence and incompetence, and that diagnostic reports issued in his name were false and misleading. He also agreed that unjustified billings were submitted to a

sampling of 6 insurance carriers for the years of 1996-1998 alone in the amount of \$839,350 (Ex. 5).

3. The instant hearing was originally scheduled for March 21, 2001, and Respondent was duly notified. The notice included a statement of the requirement that he file an answer with the Bureau of Adjudication no later than 10 days prior to the hearing or any allegations charged would be deemed admitted, as well as a statement of the requirement that all adjournment requests be made in writing to the Bureau of Adjudication at least 5 days prior to the hearing. The notice specified that adjournments are not routinely granted, that claims of illness required medical documentation, and that the hearing would be held in Respondent's absence if he did not appear (Ex. 1). Thereafter, Respondent received four adjournments, agreed to by the Department, during the pendency of an appeal of the New Jersey action (Ex. 6(a)-(c) & (f)).
4. On June 19, 2002, the Superior Court of New Jersey issued a decision affirming the validity of the settlement between Respondent and the New Jersey Board. The appeal had focused on whether the financial terms of the settlement (costs and penalties) were properly decided (Ex. 7).
5. On June 25, 2002, Respondent was notified in writing that the instant hearing had been rescheduled for July 18, 2002 (Ex. 6(g)). On July 1, 2002, he was again notified in writing by Mr. Bogan that the hearing would be held on July 18, 2002, and that the Department would not consent to any more adjournments (Ex. 6(h)).
6. On July 18, 2002, shortly before the hearing was to commence, the Administrative Law Judge received a phone call from Respondent requesting another adjournment of the hearing so he could obtain reconsideration of the denial of his appeal from the terms of his settlement. Respondent also claimed to have a headache and be dizzy. The

Administrative Law Judge advised Respondent that he could not agree to the requested adjournment because it was not timely and because there was seemingly no good cause for an adjournment. The Administrative Law Judge also advised Respondent that he would present Respondent's adjournment request to the Hearing Committee, but that if the Hearing Committee denied the request, the hearing would be held in his absence.

7. At no time prior to the hearing did Respondent request an adjournment in writing or file an answer to the charges.
8. Prior to the hearing, Mr., Bogan advised the Hearing Committee that he had, within the previous week, told Respondent twice in phone conversations that he did not consent to an adjournment to get the denial of appeal of his New Jersey settlement reconsidered because the appeal was not on the merits of the case, but merely related to the sanction, and because there was little probability of success for such request for reconsideration. Respondent told Mr. Bogan that he would attend the hearing.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the findings in the New Jersey Board's disciplinary order against Respondent constitute misconduct under the laws of New York State, pursuant to Education Law Sections 6530(9)(b) and (d), in that the conduct would have constituted misconduct in New York, had the acts been committed here, pursuant to the definitions of misconduct cited by the department in the Statement of Charges:

- New York Education Law §6530(2) (practicing the profession fraudulently);
- New York Education Law §6530(3) (negligence on more than one occasion);
- New York Education Law §6530(4) (gross negligence);

- New York Education Law §6530(5) (incompetence on more than one occasion);
- New York Education Law §6530(6) (gross incompetence);
- New York Education Law §6530(11) (permitting, aiding or abetting an unlicensed person to perform activities requiring a license);
- New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of state, federal or local laws, rules or regulations governing the practice of medicine);
- New York Education Law §6530(19) (permitting a person not authorized to share in the fees for professional services);
- New York Education Law §6530(20) (engaging in conduct which evidences moral unfitness to practice medicine);
- New York Education Law §6530(21)(making or filing a false report); and
- New York Education Law §6530(25) (delegating professional responsibility to persons not qualified to perform them).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another

state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

After seeing the evidence and hearing the attestations of the Administrative Law Judge and Mr. Bogan as to Respondent's last-ditch request for an adjournment, the Hearing Committee determined that no further adjournment should be granted. The adjournment request was obviously not for good cause, and may best be characterized as a transparent attempt to unnecessarily further delay the hearing. The appeal from the settlement, even if it had been granted, would not have altered the findings and admissions as to Respondent's conduct, and the appeal is, therefore, irrelevant to the issues to be addressed at the instant hearing, and Respondent was properly so advised. The Hearing Committee was also unimpressed with Respondent's claim that his health prevented him from attending the hearing.

As to the merits of the instant case, the record establishes that Respondent lost his license in the State of New Jersey as a result of his involvement in what might best be described as a massive insurance fraud scheme. Respondent's conduct, as admitted to by him in the New Jersey settlement, evinces a complete abdication of his legal, ethical and moral responsibilities as a physician, and the New Jersey Order clearly constitutes overwhelming evidence of misconduct in New York state.

The Hearing Committee concludes that revocation of Respondent's license is clearly called for as the appropriate penalty for his misconduct. Even if Respondent had attended this hearing, he would only have been allowed, pursuant to Public Health Law 230(10)(p),

to present evidence as to the penalty to be imposed, and the Hearing Committee concludes that nothing Respondent could have presented at the hearing would have mitigated against the sanction of revocation.

ORDER

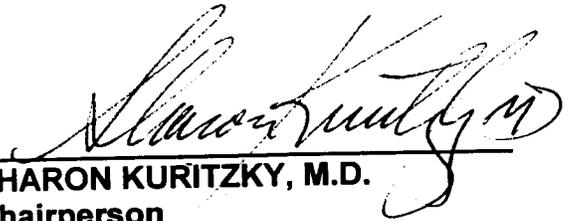
IT IS HEREBY ORDERED THAT:

1. The New York State medical license of **ADIB B. HINDI, M.D.** is hereby **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Amherst, New York

August 5, 2002


SHARON KURITZKY, M.D.
Chairperson

JOEL H. PAULL, D.D.S., M.D., J.D.
MS. DEANNA KRUSENSTJERNA

APPENDIX 1

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

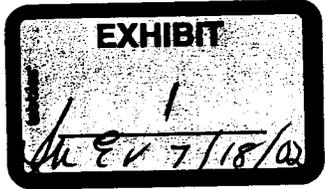
IN THE MATTER

OF

ADIB B. HINDI, M.D.
CO-00-08-3665-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ADIB B. HINDI, M.D.
123 Herman Street
Carteret, NJ 07008



PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 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 21st day of March 2001, 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 attached Statement of Charges. 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 that 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, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of

Adjudication") as well as the Department of Health attorney indicated below, on or before March 12, 2001.

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 of 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 March 12, 2001, 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

February 27, 2001



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

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

IN THE MATTER
OF
ADIB B. HINDI, M.D.
CO-00-08-3665-A

STATEMENT
OF
CHARGES

ADIB B. HINDI, M.D., the Respondent, was authorized to practice medicine in New York state on January 30, 1973, by the issuance of license number 114870 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 22, 2000, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, Board of Medical Examiners, (hereinafter "New Jersey Board"), by a Final Decision and Order, (hereinafter "New Jersey Order"), accepted the permanent surrender of Respondent's license to practice medicine and deemed it a revocation, based on Respondent allowing his name to appear as a principal on letterhead stationary of Modern Diagnostic & Medical Center, Inc. and as the sole shareholder for Paulison Diagnostic and Medical Services, P.C./P.A. when they were owned and controlled by another person, unlicensed as a medical professional, allowing decisions regarding his medical services and those rendered by others to be determined by unlicensed persons, gross negligence and incompetence, repeated acts of negligence and incompetence, and unjustified billings to insurance carriers.

B. The conduct resulting in the New Jersey Board's disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);

2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(4) (gross negligence);
4. New York Education Law §6530(5) (incompetence on more than one occasion);
5. New York Education Law §6530(6) (gross incompetence);
6. New York Education Law §6530(11) (permitting, aiding or betting an unlicensed person to perform activities requiring a license);
7. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine);
8. New York Education Law §6539(19) (permitting a person not authorized to share in the fees for professional services);
9. New York Education Law §6530(20) (moral unfitness);
10. New York Education Law §6530(21) (making or filing a false report); and/or
11. New York Education Law §6530(25) (delegating professional responsibility to persons not qualified to perform them).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(d) by having permanently surrendering his license to practice medicine or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the permanent surrender or other disciplinary

action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *Feb. 27*, 2001
Albany, New York


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