



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

April 18, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frederick Zimmer, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2503
Albany, New York 12237

Anders Holmberg, M.D.
4039 Barnes Avenue
Bronx, New York 10466

B. Anthony Morosco, Esq.
175 Main Street
White Plains, New York 10601

RE: In the Matter of Anders Holmberg, M.D.

Dear Mr. Zimmer, Dr. Holmberg and Mr. Morosco:

Enclosed please find the Determination and Order (No. BPMC-97-97) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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.

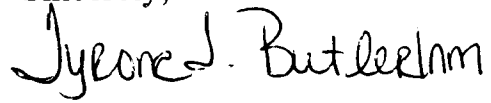
The notice of review served on the Administrative Review Board should be forwarded to:

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 that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T" and a long, sweeping underline.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

COPY

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

-----X
IN THE MATTER :
OF :
ANDERS HOLMBERG, M.D. :
-----X

DETERMINATION

AND

ORDER

BPMC-97-97

A Notice of Referral Proceeding and Statement of Charges, both dated January 15, 1997, were served upon the Respondent, Anders Holmberg, M.D. **IRVING CAPLAN (Chair), ALBERT L. BARTOLETTI, M.D.,** and **J. LaRUE WILEY, 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, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Frederick Zimmer, Esq., Assistant Counsel. The Respondent appeared by B. Anthony Morosco, Esq. A hearing was held on March 19, 1997. 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) [conviction of a crime under New York State law]. The criminal conviction related to false claims submitted to the Medicaid program for custom orthotic devices (Respondent is also a licensed podiatrist). 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. Anders Holmberg, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on March 18, 1985 by the issuance of license number 161607 by the New York State Education Department. (Pet. Ex. #2).

2. On or about February 9, 1996 Respondent was convicted, in the Albany County Court of the State of New York, of one count of grand larceny in the third degree and ten counts of offering a false instrument for filing in the first degree. Respondent was sentenced to a 180 days in the Albany County jail and five years probation on each of the counts, to be served concurrently. Respondent was also required to make restitution in the amount of \$42,504.00. (Pet. Ex. #3).

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 Respondent was convicted of one count of grand larceny in the third degree, in violation of New York Penal Law §155.35 (a class D felony), and ten counts of offering a false instrument for filing in the first degree, in violation of New York Penal Law §175.35 (a class E felony). As a result, the Hearing Committee voted to sustain the specification of professional misconduct set forth 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 should receive a censure and reprimand in full satisfaction of the charge brought against him. 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.

Respondent's criminal conviction is based upon the fact that he used a particular Medicaid billing code (90473 - "foot mold, balance inlay support (casting & fabrication)) to charge the Medicaid program for the preparation of custom orthotic devices. In fact, Respondent used a different method, known as pedograph tracings, to design the orthotics. Apparently there was no Medicaid procedure code which accounted for this method of preparing custom orthotic devices.

Ordinarily, this Hearing Committee would be inclined to order the revocation of a respondent's medical license for Medicaid fraud. However, there are several mitigating factors present in this case which warrant a more lenient sanction. There were no allegations that any patients did not actually receive custom orthotic devices or that they were not properly made. Neither was it alleged that Respondent submitted claims for ghost patients or for patients not in need of orthotic

devices.

The Hearing Committee also considered the fact that Respondent was sentenced to a substantial term of actual incarceration (six months) for the criminal conviction, as well as being ordered to pay restitution in the amount of \$42,000. The Committee found no evidence that Respondent's actions (unlawful though they may have been), were an attempt to unjustly enrich himself at the Medicaid program's expense.

The Committee determined that Respondent's continued ability to practice medicine does not pose an undue risk to the people of this state. Under the totality of the circumstances, the Hearing Committee unanimously determined that a censure and reprimand is the appropriate sanction to be imposed upon Respondent.

ORDER

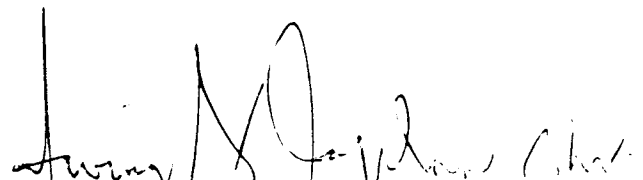
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

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

2. Respondent is hereby **CENSURED AND REPRIMANDED** in full satisfaction of the charges brought against him;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
4/14, 1997


IRVING CAPLAN (CHAIR)

ALBERT L. BARTOLETTI, M.D.
J. LaRUE WILEY, M.D.

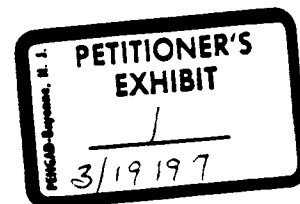
TO: Frederick Zimmer, Esq.
Assistant Counsel
New York State Department of Health
Tower Building - Room 2503
Albany, New York 12237

Anders Holmberg, M.D.
4039 Barnes Avenue
Bronx, New York 10466

B. Anthony Morosco, Esq.
175 Main Street
White Plains, New York 10601

APPENDIX I

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



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IN THE MATTER : NOTICE OF
OF : REFERRAL
ANDERS HOLMBERG, M.D. : PROCEEDING

-----x

TO: Anders Holmberg, M.D.
4039 Barnes Avenue
Bronx, New York 10466

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 5th day of March, 1997 at 10:00 in the forenoon of that day at 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 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, 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 February 26, 1997.

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 or 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 indicted 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 February 26, 1997 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
January 15, 1997



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

Inquiries should be addressed to:

Frederick Zimmer
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2503
Empire State Plaza
Albany, New York 12237
(518) 486-1841

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ANDERS HOLMBERG, M.D. : CHARGES

-----X

ANDERS HOLMBERG, M.D., the Respondent, was authorized to practice medicine in New York State on March 18, 1985 by the issuance of license number 161607 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent, by a Certificate of Conviction, number AG2-2881, dated July 2, 1996, was convicted in the Albany County Court of the State of New York on February 9, 1996, of one count of grand larceny in the third degree and ten counts of offering a false instrument for filing in the first degree. Respondent received a sentence, on or about April 12, 1996, consisting of 180 days in the Albany County jail and five years probation on each of the above counts to run concurrently. Respondent was also required to make restitution in the amount of \$42,504, payable by April 11, 2001 via probation.

SPECIFICATION

Respondent is guilty of professional misconduct by reason of his having been convicted of committing an act constituting a crime under New York State law in violation of N.Y. Education Law, §6530 (9)(a)(i) (McKinney Supp. 1997) in that the Petitioner charges the facts in paragraph A.

DATED: *January 15*, 1997
Albany, New York

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