



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

R. Chasin, M.D. M.P.P., M.P.H.
Commissioner

Public

Paula Wilson
Executive Deputy Commissioner

March 14, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Murray Richman, Esq.
2027 Williamsbridge Rd.
Bronx, New York 10461

Ralph Bavaro, Esq.
NYS Dept. of Health
Division of Legal Affairs
5 Penn Plaza - 6th Flr.
New York, New York 10001

Earl Kabnick, M.D.

Redacted Address

RE: In the Matter of Earl M. Kabnick, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 94-29) 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.

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.

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 of the Hearing Committee's Determination and Order.

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The notice of review served on the Administrative Review Board should be forwarded to the New York State Department of Health, Bureau of Adjudication, Corning Tower-Room 2503, Empire State Plaza, Albany, New York 12237-0030, Attention: James F. Horan, Esq., Administrative Law Judge. 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,

Redacted Signature

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:lar
Enclosure

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

IN THE MATTER
OF
EARL M. KABNICK, M.D.

DETERMINATION
AND
ORDER

No. BPMC 94-27

CAROLYN C. SNIPE, Chairperson, LINDA D. LEWIS, M.D.,
and JOSEPH GRECO, M.D., duly designated members of the State
Board for Professional Medical Conduct, appointed by the
Commissioner of Health of the State of New York pursuant to
Section 230(1) of the Public Health Law, served as the Hearing
Committee in this matter pursuant to Sections 230(10)(e) and
230(12) of the Public Health Law. ELLEN B. SIMON, Esq.,
Administrative Law Judge, served as Administrative Officer for
the Hearing Committee.

After consideration of the entire record, the Hearing
Committee submits this determination.

STATEMENT OF CHARGES

The Statement of Charges charges the Respondent with
professional medical misconduct within the meaning of New York
Education Law Section 6530(9)(1)(a) as the result of his
conviction, under New York law, of the class D felony of grand

larceny in the third degree for fraudulent Medicaid billing.

SUMMARY OF PROCEEDINGS

Notice of Referral Proceeding date: June 17, 1993
Statement of Charges date: June 17, 1993
Hearing Date: October 20, 1993
Deliberation Date: December 3, 1993
Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, New York
Petitioner Appeared By: Peter J. Millock, Esq.
General Counsel
NYS Department of Health
By: Ralph J. Bavaro, Esq.
Associate Counsel
Respondent Appeared By: Murray Richman, Esq.
2027 Williamsbridge Road
Bronx, New York
Andrew Horn, Esq.

WITNESSES

For the Petitioner:

Anthony Casola
Camille Donato
Phillip Schillaci
Pierre Eveillard
Michael Conjalka, M.D.

FINDINGS OF FACT

Numbers in parentheses refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding.

Conflicting evidence, if any, was considered and rejected in favor of the evidence cited.

1. On March 10, 1992, Respondent pleaded guilty, under New York State Law, to a class D felony (Dept.'s 5, p.8, lines 5-13).

2. On August 28, 1992, Respondent was convicted, in the County Court, Westchester County, of grand larceny in the third degree and sentenced to five years probation with 500 hours of community service and restitution of \$75,000 (Dept.'s 3).

3. The crime of which Respondent was convicted consisted of, inter alia, falsely billing the State of New York for having read and reviewed more than 9,000 Medicaid patients' sonograms, knowing that the tests were unnecessary and sometimes fictitious (Dept.'s 3, pp. 7-8).

CONCLUSIONS

Respondent is guilty of professional medical misconduct on more than one occasion within the meaning of New York Education Law Section 6530(9)(a)(1).

VOTE OF THE HEARING COMMITTEE AND DETERMINATION AS TO PENALTY

Between December 1987 and about August 1988, Respondent engaged in fraudulent activities relevant to the practice of radiology with intent to defraud the State of New York of \$75,000 (Dept.'s 5, p.17, lines 2-20).

During that time, Respondent knowingly abused his role as attending radiologist and supervisor of residents by hiring and utilizing two residents for the purpose of prescreening ultrasound cases that were fraudulently obtained (Dept.'s 5, p.17, lines 2-20). That utilization has been characterized as hidden and secretive. Moreover, it appears that Respondent himself lacked the expertise necessary to supervise those residents in that activity (Dept.'s 2, p. 14, paragraph 2).

Such activity constitutes illegal appropriation of property of the State of New York (Dept.'s 5, p.17, lines 14-20). In addition, Respondent utilized personnel and property of Queens Hospital Center, a hospital of the City of New York, to conduct activities for his own personal gain (Dept.'s 2, p.14, paragraph 2; T.7, lines 20-25; 8, lines 1-9; 47, lines 23-25; 48, lines 1-3).

The Committee finds Respondent's behavior reprehensible. Respondent himself admitted putting patients at risk (Dept.'s 3, p.9, paragraph 2). Those patients could have suffered serious medical consequences.

Equally disturbing to the Committee is Respondent's overt greed, as evidenced by his own statement that the reason for his illegal activity was to make money (T 47, lines 23-25; 48, lines 1-3), as his salary was only in "the high 40's or low 50's" (T 46, lines 18-25; 47, lines 1-9).

Finally, the Committee is offended by Respondent's breach of the public trust as evidenced by his admission that he did not fulfill his obligations as a licensed physician (T 49, lines 5-12; T 47, lines 10-25; 48, lines 1-3; Dept.'s 3, p. 8, last paragraph; Dept.'s 5, p. 17, lines 14-24, p. 18, lines 1-6).

Under these circumstances, the Committee feels that two years suspension, such suspension to be stayed for one year, and a fine of \$10,000, is an appropriate penalty.

Accordingly, the Committee has unanimously determined that Respondent's license to practice medicine in the State of New York be suspended for two years, one year of which suspension shall be stayed, and that Respondent be fined the sum of \$10,000.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice medicine in the State of New York is SUSPENDED for a period of two years, and
2. One year of such suspension is STAYED, and
3. Respondent is fined the sum of \$10,000.

Dated: Queens, New York
December , 1994

Redacted Signature

CAROLYN C. SNIPE (Chairperson)

LINDA D. LEWIS, M.D.

JOSEPH GRECO, M.D. !