

DOH 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

September 2, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

John Joseph Karlavage, M.D.
c/o Ms. Carole Vallette
2321 Spicewood Court
Dunedin, Florida 34698

PUBLIC

RE: In the Matter of John Joseph Karlavage, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-205) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Tyrone T. Butler/jc

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:lcc
Enclosure

COPY

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

**IN THE MATTER
OF
JOHN JOSEPH KARLAVAGE, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-98-205

A Notice of Referral Proceeding and Statement of Charges, both dated June 22, 1998 were served upon the Respondent, **JOHN JOSEPH KARLAVAGE, M.D.**

IRWIN COHEN, M.D., Chairperson, **JAMES DUCEY** and **ZORAIDA NAVARRO, 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. **MICHAEL P. McDERMOTT, ESQ.**, Administrative Law Judge, served as Administrative Officer.

A hearing was held on August 19, 1998, at the Offices of the New York State Department of Health, 5 Penn Plaza, New York, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **MARCIA KAPLAN, ESQ.**, of Counsel. The Respondent 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 case, 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 Section 6530(9)(a)(iii) and 6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. John Joseph Karlavage, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1975, by the issuance of license number 124109 by the New York State Education Department. He is not currently licensed to practice medicine in New York State. (Pet.'s Ex. 4)

2. On February 5, 1996, the Respondent was convicted in the Court of Common Pleas of Dauphin County, Criminal Division; Commonwealth of Pennsylvania, upon a plea of nolo contendere, of Medicaid Fraud, in violation of 62 P.S. 1407(a)(9), i.e. submitting claims for services that were not rendered by the provider, in that between March 17, 1993 through December 20, 1993, as part of a continuing scheme to defraud the Office of Medical Assistance, Department of Public Welfare, Commonwealth of Pennsylvania, the Respondent knowingly and intentionally submitted claims to the Medical Assistance Program indicating that he performed services for patients when in fact an uncertified physician assistant employed by the Respondent, rendered treatment or performed Pulmonary Function Tests when the Respondent was not on the premises to render the service of an office visit to the patient.

The Respondent was sentenced to six months probation. (Pet.'s Ex.5)

3. If committed within this state, this act would have constituted a crime under New York State law, namely N.Y. Penal Law §§175.30 and/or 175.35. (Pet.'s Ex. 7)
4. By Consent Agreement and Order, dated, December 17, 1996, the Pennsylvania State Board of Medicine revoked the Respondent's license to practice medicine upon finding that Respondent violated the Pennsylvania Medical Practice Act as follows:

63 P.S. Sec. 422.47(7), by knowingly maintaining a professional connection with an unlicensed person and in aiding and abetting the unlicensed person to perform medical services from March-December 1993 at the Good Samaritan Clinic.

63 P.S. Sec. 422.41(2), by committing fraud in the practice by billing the Pennsylvania Department of Public Welfare Office of Medical Assistance for services not provided by him; i.e. by billing for services provided by the unlicensed person.

(Pet.'s Ex. 6a)

5. If committed in New York State, the Respondent's conduct would constitute professional misconduct under the laws of New York State {namely N.Y. Educ. Law §§6530(2) (practicing the profession fraudulently), (11) (permitting, aiding or abetting an unlicensed person to perform activities requiring a license), and/or (25) (delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure to perform them}.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1998) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State (namely N.Y. Educ. Law §6530(2), (11) and/or (25)).

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

CRIMINAL CONVICTION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law (namely N.Y. Penal Law §§175.30 and/or 175.35)

VOTE: SUSTAINED (3-0)

DETERMINATION OF THE HEARING COMMITTEE

The Respondent was convicted of a serious crime arising from a scheme to defraud the Office of Medical Assistance, Department of Public Welfare, Commonwealth of Pennsylvania.

Also, the Pennsylvania Board of Medicine revoked the Respondent's license to practice medicine for knowingly maintaining a professional connection with an unlicensed person and aiding and abetting the unlicensed person to perform medical services, and for billing the Department of Public Welfare for services not provided by him; i.e. by billing for services provided by the unlicensed person.

The Respondent did not appear at the present hearing nor did he submit any evidence in mitigation of the charges.

The Hearing Committee determines that the Respondent's license to practice medicine in New York State should be **REVOKED**.

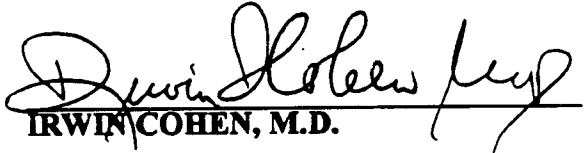
ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED.**
2. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: New York, New York

8/27/98 1998


IRWIN COHEN, M.D.

**JAMES DUCEY
ZORAIDA NAVARRO, M.D.**

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

IN THE MATTER
OF
JOHN JOSEPH KARLAVAGE, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: JOHN JOSEPH KARLAVAGE, M.D.
c/o Ms. Carole Vallette
2321 Spicewood Court
Dunedin, Fl 34698



PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1998) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on August 19, 1998, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of 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 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1998) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary

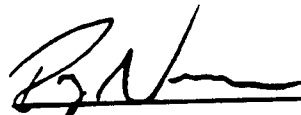
evidence and a description of physical or other evidence which cannot be photocopied.

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: New York, New York
June, 22 1998



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

**Marcia E. Kaplan
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615**

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

IN THE MATTER
OF
JOHN JOSEPH KARLAVAGE, M.D.

STATEMENT
OF
CHARGES

JOHN JOSEPH KARLAVAGE, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1975, by the issuance of license number 124109 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 17, 1996, the Pennsylvania State Board of Medicine revoked Respondent's license to practice medicine upon finding that Respondent violated the Pennsylvania Medical Practice Act as follows: 63 P.S. Sec. 422.47(7), by knowingly maintaining a professional connection with an unlicensed person and in aiding and abetting the unlicensed person; i.e. Kevin Sample, a recovering cocaine addict he knew was unlicensed, to perform medical services from March-December 1993 at the Good Samaritan Clinic; and 63 P.S. Sec. 422.41(2), by committing fraud in the practice by billing the Pennsylvania Department of Public Welfare office of Medical Assistance for services not provided by him; i.e. by billing for services provided by Sample. If committed in New York state, this conduct would constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§6530(2) (practicing the profession fraudulently), (11) (permitting, aiding or abetting an unlicensed person to perform activities requiring a license), and/or (25) (delegating professional responsibilities to a

person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure to perform them}.

- B. On or about February 5, 1996, Respondent was convicted in the Court of Common Pleas of Dauphin County, Criminal Division, Commonwealth of Pennsylvania, upon a plea of nolo contendere, of Medicaid Fraud, in violation of 62 P.S. 1407(a)(9), i.e. submitting claims for services that were not rendered by the provider, as follows: between on or about March 17, 1993 through December 20, 1993, as part of a continuing scheme to defraud the Office of Medical Assistance, Department of Public Welfare, Commonwealth of Pennsylvania, Respondent knowingly and intentionally submitted claims to the Medical Assistance Program indicating that he performed services for patients when in fact Kevin E. Sample, an uncertified physician assistant employed by Respondent, rendered treatment or performed Pulmonary Function Tests when Respondent was not on the premises to render the service of an office visit to the patient. Respondent was sentenced to six months probation. If committed within this state, this act would have constituted a crime under New York state law, namely N.Y. Penal Law §§ 175.30 and/or 175.35.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1998) by having his or her license to

practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530 (2),(11) and/or (25)) as alleged in the facts of the following:

1. Paragraph A.

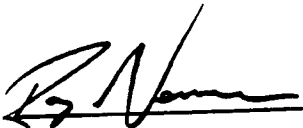
SECOND SPECIFICATION

CRIMINAL CONVICTION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Penal Law §§175.30 and/or 175.35) as alleged in the facts of the following:

2. Paragraph B.

DATED: June 22, 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct