



**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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 4, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza – 6th Floor
New York, New York 10001

Fred Antonio Avila, M.D.
141 Christie Street
Leonia, New Jersey 07605

Howard I. Bushin, Esq.
251 West 93rd Street
New York, New York 10025

RE: In the Matter of Fred Antonio Avila, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-257) 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.

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.

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:cah
Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
OF : AND
FRED ANTONIO AVILA, M.D. : ORDER
-----X
BPMC #00-257

A Notice of Hearing and Statement of Charges, both dated March 6, 2000, were served upon the Respondent, Fred Antonio Avila, M.D. **BENJAMIN WAINFELD, M.D. (Chair), CARMELA TORELLI, and RUFUS A. NICHOLS, 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. The Department of Health appeared by David W. Smith, Esq., Associate Counsel. The Respondent appeared by Howard Bushin, Esq. A hearing was held on June 5, 2000. 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

Petitioner has charged Respondent, a board-certified obstetrician/gynecologist, with four specifications of professional misconduct. Respondent is charged with practicing

the profession fraudulently, willfully making or filing a false report, failure to maintain accurate records, and moral unfitness. All of these charges arise out of Respondent's alleged billing to an insurance carrier for a tubal ligation which was not performed. Respondent concedes that the planned surgery did not take place and that the insurance company was nevertheless billed as if it had occurred, but denies that he intended to commit fraud.

A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The Parties to this proceeding entered into a Stipulation of Facts which effectively set forth the relevant facts for the purpose of determining the validity of the allegations set forth by the Petitioner. Accordingly, the Hearing Committee has adopted these stipulated facts *in toto*.

1. Respondent, Fred A. Avila, M.D., a physician duly licensed in New York State is charged with, among other things, billing the insurance carrier of Patient A for a tubal ligation which, in fact, was never performed.

(Pet. Exh. 1, 2)

2. Respondent practices Obstetrics/Gynecology and maintains offices at 481 Fort Washington Avenue, New York City. He is an attending at New York Columbia Presbyterian Hospital ("Hospital").
3. From in or about 1993 through May, 1994, Respondent cared for Patient A during her pregnancy and delivered her baby on or about May 31, 1994. (Pet. Exh. 3)
4. At or about the same time as the delivery, Patient A requested a tubal ligation to be performed by Respondent at the Allen Pavilion, the out-patient clinic of the Hospital. Respondent agreed and the procedure was scheduled to take place on August 2, 1994.
5. Patient A came to the Hospital Clinic on August 2, 1994 and was examined pre-operatively by the anesthesiologist on duty. It is a Hospital requirement to have a patient cleared by an anesthesiologist prior to such a procedure.
6. Just prior to or during the examination, Patient A had an asthma attack. The anesthesiologist refused to clear Patient A for the operation and probably told Respondent about it the same day. The tubal ligation was canceled, not rescheduled, and never performed by Respondent. The

- patient record at the Clinic shows that the procedure was canceled. (Pet. Exh. 4)
7. When the anesthesiologist on duty at the Clinic examines the patient and either clears or refuses to clear the patient for a procedure, Hospital procedure requires him to make a patient note in the Clinic record. Although the Clinic record herein shows that the procedure was canceled, it does not contain the anesthesiologist's note. It does, however, contain a copy of Respondent's operating report dictated by Respondent to the Hospital on December 21, 1995, over a year after the procedure was canceled, in which he states that he performed the tubal ligation on Patient A on August 2, 1994. (Pet. Exh. 7) No independent record of the procedure exists in Respondent's own patient record of Patient A. (Pet. Exh. 6)
 8. On or about August 4, 1994, two days after the cancellation, Respondent billed the insurance carrier for Patient A, GHI, the sum of \$2,500.00 for the tubal ligation. (Pet. Exh. 8) On or about August 17, 1994, GHI paid Respondent \$840.00 in full settlement of the bill.
 9. Prior to April, 1995, Patient A informed GHI that the

- procedure had never been done. On or about April 25, 1995, GHI requested the operating report from Respondent. (Pet. Exh. 9) Thereafter, on or about May 5, 1995, Respondent answered GHI saying that he had done the procedure and that the Hospital had the record. (Pet. Exh. 10)
10. On June 1, 1995, and again on August 30, 1995, GHI requested the records of the procedure from the Hospital. (Pet. Exh. 11 and 12)
 11. On November 3, 1995, GHI wrote Respondent saying the Hospital had not forwarded the operating report and if GHI did not receive it, they would seek a refund of \$840.00 from Respondent. (Pet. Exh. 13) Respondent failed to answer so, on December 12, 1995 GHI again wrote Respondent this time saying that if they did not get the report they would terminate Respondent as a GHI participating physician. (Pet. Exh. 14)
 12. Subsequent to the December 12th letter from GHI Respondent dictated the operating report (Pet. Exh. 7) and on January 2, 1996, he sent GHI a letter stating that he was faxing the report and he did, indeed, fax it to them. (Pet. Exh. 7)
 13. Respondent was interviewed by OPMC on September 14, 1999

regarding this matter. During that interview he stated that he had prepared the operating report at the request of the medical records department of the Hospital. In fact, the Hospital has no record of ever having requested him to do so.

14. At the OPMC interview of September 14, 1999, Respondent also stated that he had, in fact, performed the tubal ligation as scheduled.

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.

Respondent is charged with four specifications alleging professional misconduct within the meaning of Education Law § 6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but does not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by Henry M. Greenberg, Esq., General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under

the New York Education Law", sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence, and the fraudulent practice of medicine.

The following definition was utilized by the Hearing Committee during its deliberations:

Fraudulent Practice of Medicine is an intentional misrepresentation or concealment of a known fact. An individual's knowledge that he/she is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts.

It is undisputed that Respondent did not perform a tubal ligation on Patient A on August 2, 1994. It is further undisputed that Respondent billed GHI \$2,500.00 for the unperformed tubal ligation, and that GHI ultimately paid Respondent \$840.00 in satisfaction of the claim. Following repeated correspondence from GHI, which sought proof that the surgery had been performed, in December, 1995, Respondent dictated an operative report, and sent a copy to the carrier.

Petitioner alleges that Respondent deliberately, and with intent to deceive, falsely billed the insurance carrier, and created an intentionally false operative report. Petitioner further alleges that this conduct constitutes fraud, the willful

filing of a false report, and evidences Respondent's moral unfitness to practice the profession. We disagree. In reaching these conclusions, we have considered the stipulated facts, as well as the testimony of Respondent, Molly Avila - his office manager and wife, and Laura Jimenez, the former billing clerk.

The uncontradicted testimony revealed that Respondent forgot to inform his staff that the surgery was cancelled. Ms. Jimenez testified that following office practice, a bill would have been prepared, based upon the fact that the surgery was on the schedule and noted in the record. Respondent failed to note in the patient's record that the surgery had been cancelled. There was further testimony that Respondent routinely signed the various insurance forms in bulk as presented to him. He did not review each form for accuracy before they were sent out.

Mrs. Avila testified that, as the office manager, she handled all correspondence between the practice and the insurance carrier. It was not until December, 1995, when GHI threatened to terminate Respondent as a participating physician, that Mrs. Avila informed Respondent about the billing dispute, and that the hospital had not forwarded an operative report. At that point, more than a year after the scheduled surgery, Respondent erroneously assumed that the surgery had been performed, and dictated a boilerplate report.

Based upon the record as a whole, it became apparent to this Committee that the inaccurate billing was the result of poor communication between Respondent and his staff, and on Respondent's failure to properly oversee the billing operations of his practice. We find no evidence of an intent to defraud the insurance carrier or to create a deliberately misleading operative report. Accordingly, the Hearing Committee unanimously voted to dismiss the Specifications of fraud (First Specification), willful making or filing of a false report (Second Specification), and moral unfitness (Fourth Specification).

Respondent failed to note in his office record that the procedure had been cancelled, and further compounded his problems by dictating and placing into the hospital record an operative report which incorrectly describes surgery never performed on Patient A. Thus, it is clear that Respondent failed to maintain a record which accurately reflected the care and treatment of the patient, in violation of N.Y. Education Law §6530(32). Accordingly, the Hearing Committee voted to sustain the Third Specification of professional misconduct.

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 be placed on probation for a period of two years following the effective date of this Determination and Order. The terms of probation shall include a requirement for monitoring of Respondent's medical records for completeness, accuracy, and proper billing. The complete terms of probation are attached to this Determination and Order in Appendix II and incorporated herein. Respondent shall be required to correct the medical records for Patient A, both in his office and at Columbia Presbyterian Hospital, to reflect that the patient's surgery did not take place. Respondent shall also be required to attend a continuing medical education course in proper office management and billing practices. Further, Respondent shall be required to repay GHI \$840.00 in restitution. Lastly, a fine in the amount of \$5,000.00 shall be imposed upon Respondent for his misconduct. 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 was satisfied that the billing improprieties at issue in this case, were due to poor office billing and record-keeping practices, rather than a venal attempt to obtain unwarranted income. Therefore, the Committee

determined that neither revocation nor a period of license suspension were appropriate. Nevertheless, the Committee was concerned by the somewhat cavalier attitude displayed by Respondent regarding this case. They were also troubled by the fact that Respondent had not re-paid the surgical fee to the insurance carrier, and had not corrected the records to reflect the fact that the planned surgery did not take place. As a result, the Committee unanimously determined that Respondent should be ordered to repay the carrier, as well as pay a significant fine. The Committee further determined that a two year period of probation was warranted, during which Respondent's medical records shall be monitored for accuracy, completeness and proper billing.

ORDER

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

1. The First, Second and Fourth Specifications of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) are **DISMISSED**;
2. The Third Specification of professional misconduct is **SUSTAINED**;
3. Respondent's license to practice medicine as a

physician in New York State be and hereby is placed on PROBATION for a period of two (2) years commencing on the effective date of this Determination and Order. The complete terms of probation are attached to this Determination and Order in Appendix II and incorporated herein;

4. Respondent shall attend and successfully complete a continuing medical education course in proper office management and billing practices. Said course must be approved by the Director of the Office of Professional Medical Conduct, prior to Respondent's attendance;

5. Respondent shall, within thirty (30) days of the effective date of this Determination and Order, correct both his office medical records for Patient A, as well as the Columbia Presbyterian Hospital record, to reflect the fact that the planned surgery did not take place;

6. Respondent shall pay Group Health Incorporated the sum of \$840.00 in restitution, within thirty (30) days of the effective date of the this Determination and Order;

7. A fine in the amount of \$5,000.00 shall be and hereby is assessed against Respondent. Payment of the aforesaid sum shall be made to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York 12237 within thirty

(30) days of the effective date of this Order;

8. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32);

9. 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: Troy, New York

9/27/2000


BENJAMIN WAINFELD, M.D. (CHAIR)

CARMELA TORELLI
RUFUS A. NICHOLS, M.D.

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

Fred Antonio Avila, M.D.
141 Christie Street
Leonia, New Jersey 07605

Howard I. Bushin, Esq.
251 West 93rd Street
New York, New York 10025

APPENDIX I

LA 1

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

IN THE MATTER
OF
FRED ANTONIO AVILA, M.D.

NOTICE
OF
HEARING

TO: Fred Antonio Avila, M.D.
141 Christie Street
Leona, New Jersey 07605

EXHIBIT
DATE: 6/5/00
HELAINÉ GUGGENHEIM

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §200.1 (McKinney 1990 and Supp. 2000) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 2000). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on May 5, 2000, 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, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.


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. 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. 2000) 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A

DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp.
2000). YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
March 6, 2000



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: David W. Smith
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 268-6806

SECURITY NOTICE TO THE LICENSEE

The proceeding will be held in a secure building with restricted access. Only individuals whose names are on a list of authorized visitors for the day will be admitted to the building

No individual's name will be placed on the list of authorized visitors unless written notice of the individual's name is provided by the licensee or the licensee's attorney to one of the Department offices listed below.

The written notice may be sent via facsimile transmission, or any form of mail, but must be received by the Department **no less than two days prior to the date** of the proceeding. The notice must be on the letterhead of the licensee or the licensee's attorney, must be signed by the licensee or the licensee's attorney, and must include the following information:

Licensee's Name _____ Date of Proceeding _____

Name of person to be admitted _____

Status of person to be admitted _____
(Licensee, Attorney, Member of Law Firm, Witness, etc.)

Signature (of licensee or licensee's attorney) _____

This written notice must be sent to either:

New York State Health Department
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor South
Troy, NY 12180
Fax: 518-402-0751

New York State Health Department
Bureau of Professional Medical Conduct
5 Penn Plaza
New York, NY 10001
Fax: 212-613-2611

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

IN THE MATTER
OF
FRED ANTONIO AVILA, M.D.

STATEMENT
OF
CHARGES

FRED ANTONIO AVILA, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 18, 1983, by the issuance of license number 118847 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 2, 1994, Patient A presented to Respondent for schedule tubal ligation to be performed at the Allen Pavilion at Presbyterian Hospital but the procedure was cancelled.
1. Respondent deliberately and with intent to deceive falsely billed the insurance carrier of Patient A for a tubal ligation that was never performed.
 2. On or about December 12, 1995, Respondent deliberately and with intent to deceive created a false operating report proposing to show that, in fact, the tubal ligation had been performed on August 2, 1994.

SPECIFICATION OF CHARGES

FIRST SPECIFICATIONS

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(2)(McKinney Supp. 1999) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraphs A and A1-2.

SECOND SPECIFICATION

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21)(McKinney Supp. 1999) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

2. Paragraphs A and A1-2.

THIRD SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in

N.Y. Educ. Law §6530(32)(McKinney Supp. 2000) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

3. Paragraphs A and A1-2.

FOURTH SPECIFICATIONS
MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 2000) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

4. Paragraphs A and A1-2.

DATED: March 7, 2000
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

APPENDIX II
TERMS OF PROBATION

1. Dr. AVILA shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.

2. Dr. AVILA shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Dr. AVILA shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, 433 River Street - Suite 303, Troy, New York 12180, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Dr. AVILA leaves New York to reside or practice outside the State, Dr. AVILA shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of her departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

5. Dr. AVILA shall be required to successfully complete a continuing medical education course and/or courses in office management and billing practices. These courses must be approved in advance by the Director of the Office of Professional Medical Conduct.

6. Dr. AVILA shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. AVILA's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.

7. Dr. AVILA shall have quarterly meetings with a monitoring physician who shall review Dr. AVILA's practice. This monitoring physician shall review randomly selected medical records and evaluate whether Dr. AVILA's records comport with generally

accepted standards for completeness, accuracy and proper billing. This monitoring physician shall be selected by Dr. AVILA and is subject to the approval of the Director of the Office of Professional Medical Conduct.

8. Dr. AVILA shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.

9. Dr. AVILA shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. AVILA elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

10. If there is full compliance with every term set forth herein, Dr. AVILA may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. AVILA pursuant to New York Public Health Law §230(19) or any other applicable laws.