



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

June 24, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Prabhakar Kharod, M.D.
1720 Crane Highways South
Glenburnie, MD 21061

Karen E. Carlson, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Effective Date: 7/1/94

RE: In the Matter of Prabhakar Kharod, M.D.

Dear Dr. Kharod and Ms. Carlson :

Enclosed please find the Determination and Order (No. 94-92) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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), "(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.

Request for review of the Committee's determination by the Administrative Review Board stays all action 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
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
PRABHAKAR KHAROD, M. D.**

**REPORT OF
FINDINGS,
CONCLUSIONS
AS TO GUILT,
DETERMINATION
AND ORDER**

NO. BPMC-94-92

A Notice of Referral Proceeding and Statement of Charges, both dated April 13, 1994 were scheduled to be heard before a committee on professional medical conduct of the State Board of Professional Medical conduct in regard to the Respondent, PRABHAKAR KHAROD, M.D. (also designated as PRAHBAKAR KHAROD, M.D.).

LYON M. GREENBERG, M.D., (Chair), **JOHN B. WALDMAN, M.D.** and **SISTER MARY THERESA MURPHY** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law. **MARC P. ZYLBERBERG, ESQ.**, served as the Administrative Officer. A hearing was held on June 1, 1994. The Department of Health appeared by **PETER J. MILLOCK, ESQ.**, General Counsel by **KAREN E. CARLSON, ESQ.**, Assistant Counsel. Respondent failed to appear personally at the hearing, was not represented by counsel and failed to submit any answer or response to said Statement of Charges. Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the Hearing Committee issues this Report of Findings, Conclusions as to Guilt,

Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

REPORT OF FINDINGS

This case was brought pursuant to §230(10)(p) of the Public Health Law of the State of New York [hereinafter P.H.L. §230(10)(p)]. Respondent, PRABHAKAR KHAROD, M.D., is charged with professional misconduct within the meaning of § 6530(9)(b) of the Education Law of the State of New York (hereinafter Education Law). In this case, the Respondent is charged with "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit #1 and §6530(9)(b) of the Education Law).

The first query to be answered, under §6530(9)(b) of the Education Law, is whether the Respondent's conduct in the other State would constitute professional misconduct under the laws of New York State.

In addition to answering the above query, the scope of a P.H.L. §230(10)(p) hearing is strictly limited to evidence relating to the nature and severity of the penalty to be imposed on the licensee (Respondent).

The following Findings of Fact were made after a review of the entire record in this matter. These facts 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. Respondent was authorized to practice medicine in New York State on February 25, 1977 by the issuance of license number 130022 by the New York State Education Department. (Petitioner's Exhibit #1)¹

2. The Respondent is not currently registered with the New York State Education Department. (Petitioner's Exhibit #1, T. 10)²

3. The Respondent was personally served with the Notice of Referral Proceeding and the Statement of Charges on April 25, 1994. (Petitioner's Exhibit #2)

4. On May 8, 1991, the Maryland Board of Physician Quality Assurance, (hereinafter "Maryland Board") voted to charge the Respondent with the commission of prohibited acts, under the Laws of Maryland, resulting in unprofessional conduct. (Petitioner's Exhibit #1 and #4)

5. As a result of the charges, Respondent agreed to and did in fact sign a Consent Order, on July 30, 1992, with the Maryland Board, who countersigned said Consent Order on August 26, 1992. (Petitioner's Exhibit #4)

¹ refers to exhibits in evidence submitted by the New York State Department of Health.

² T. - followed by numbers in parentheses - refers to page numbers found in the transcript.

6. In said Consent Order, the Respondent admitted the truth of certain Findings of Fact and Conclusions of Law that he committed prohibited acts under Maryland Law. The Conclusions of Law by the Maryland Board indicate that Respondent was guilty of violating the following Statutes: (Petitioner's Exhibit #4 and #5)

§14-404(a)(3) [the licensee] Is guilty of immoral or unprofessional conduct in the practice of medicine³

§14-404(a)(19) [the licensee] Grossly and willfully overcharges for professional services³

§14-404(a)(22) [the licensee] Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State³

7. Pursuant to the terms of the above-mentioned Consent Order, Respondent's license to practice medicine in the State of Maryland was SUSPENDED, with the suspension to be STAYED for a period of three years subject to completion of extensive terms of probation imposed by the Maryland Board. (Petitioner's Exhibit #4)

8. Some of the Findings in the above mentioned Consent Order include:
(Petitioner's Exhibit #4)

- (a) a complaint by a former patient regarding Respondent's billing practices;
- (b) an admission by Respondent that he commonly overcharged insured patients to compensate him for his services in treating patients who did not pay their medical bills;

³ Maryland Medical Practice Act and/or Maryland Health Occupations Code, located within the Annotated Code of Maryland.

- (c) Respondent failed to keep and maintain appropriate medical records;
- (d) Respondent engaged in a pattern of billing patients for services that was not documented or was disproportionate to the patients' condition;
- (e) Respondent failed to document the results of physical examinations or x-ray studies taken (if in fact these examinations or x-rays were done);
- (f) Respondent submitted duplicate or multiple billings;
- (g) Respondent miscoded surgical procedures;
- (h) extensive backlog (three months) of transcription of medical records;
- (i) vague and insufficient patient data within the Respondent's medical records;
- (j) no documentation supporting the level of services for which the Respondent billed;
- (k) billings for multiple procedures performed during the course of surgery at one anatomic location; (also known as unbundling or fragmentation)
- (l) billings for complex consultations without evidence in the medical records maintained by Respondent that services of such complexity were provided;
- (m) the level of consultation for which Respondent billed were not required for the conditions presented by the patients;
- (n) surgery performed on at least 4 patients (2 geriatrics) without documented alternative nonsurgical intervention possibilities.

CONCLUSIONS AS TO GUILT

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct in Maryland would constitute professional misconduct under the laws of New York State. The

Department of Health has met its burden of proof.

In the Consent Order with the Maryland Board, Respondent, in addition to other charges, admitted to allegations that he performed surgery on at least 4 patients (2 geriatrics) without documented alternative nonsurgical intervention possibilities. Education Law §6530(3) defines professional misconduct as "Practicing the profession with negligence on more than one occasion" Negligence has been defined as a "failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances." See Definitions of Professional Misconduct under the New York Education Law, Peter J. Millock, General Counsel, New York State Department of Health (February 5, 1992) (hereinafter "Millock Memo"). The Hearing Committee determines that Respondent's acts as to, at least the 4 aforementioned patients, were 4 separate acts of negligence performed on separate occasions.

In addition to the surgery, Respondent admitted to allegations that he failed to keep and maintain appropriate medical records; failed to document the results of physical examinations or x-ray studies taken and kept vague and insufficient patient data within the Respondent's medical records. Education Law §6530(5) defines professional misconduct as "Practicing the profession with incompetence on more than one occasion." Incompetence as been defined as a "lack of skill or knowledge necessary to practice the profession". See Millock Memo. The Committee determines that the aforementioned acts by Respondent showed incompetence.

Education Law §6530(20) defines professional misconduct as "Conduct in the practice of medicine which evidences moral unfitness to practice medicine" The Committee determines that Respondent's acts, as found in paragraphs 8a through 8n

herein, as well as the Maryland Board's Conclusion of Law and Order, provides sufficient evidence of Respondent's lack of moral fitness to practice medicine.

In addition Respondent admitted to allegations that he failed to keep and maintain appropriate medical records; failed to document the results of physical examinations or x-ray studies taken; had extensive backlog (three months) of transcription of medical records and kept vague and insufficient patient data within the Respondent's medical records. Educational Law §6530(32) defines professional misconduct as "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. ..." The Committee determines that the aforementioned acts by Respondent were sufficient to show that numerous records of his patients were not maintained accurately or properly.

As a result, the Hearing Committee unanimously finds that Respondent's conduct in the State of Maryland would constitute professional misconduct under the laws of the State of New York. The Hearing Committee unanimously votes to sustain the 4 allegations of professional misconduct and the First Specification of professional misconduct alleged by the Department of Health. (Petitioner's Exhibit #1, ¶7 at page 3 and first ¶ at page 4 of the Statement of Charges)

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice

medicine in New York State should be REVOKED. This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to §230-a of the Education Law, including censure and reprimand, suspension and/or probation, retraining and/or education, license limitations, revocation, the imposition of monetary penalties and the performance of public service.

The record establishes that Respondent committed significant violations of the Maryland Medical Practice Act and/or Maryland Health Occupations Code, located within the Annotated Code of Maryland.

In addition, the Hearing Committee concludes that if this case had been held in New York, on the facts presented, the pattern of abuses of the system, the pattern of over billing, the lack of appropriate record keeping and the lack of reasonably prudent surgical judgment would have resulted in a unanimous vote for revocation of Respondent's license.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. Therefore the Committee is bound by the documentary evidence presented.


The Hearing Committee considers Respondent's misconduct to be very serious and is concerned for the health and welfare of patients in New York State. Therefore, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction under the circumstances.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
15th June, 1994


LYON M. GREENBERG, M.D., Chair

JOHN B. WALDMAN, M.D.
SISTER MARY THERESA MURPHY

To: Prabhakar Kharod, M.D.
1720 Crane Highways South
Glenburnie, MD 21061

Peter J. Millock, Esq., General Counsel
by: Karen E. Carlson, Esq., Assistant Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2429
Empire State Plaza
Albany, New York 12237

STATE OF NEW YORK
 DEPARTMENT OF HEALTH
 DEPT.....X.....RESPT.....EXHIBIT.....7
 ID.....EVD.....
 DATE.....INITIALS.....

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

-----X
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 IN THE MATTER : NOTICE OF
 :
 OF : REFERRAL
 :
 PRAHBAKAR KHAROD, M.D. : PROCEEDING
 :
 -----X

TO: PRAHBAKAR KHAROD, M.D.
 1720 Crane Highway S.
 Glenburnie, Maryland 21061

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 1st day of June, 1994 at 2:15 p.m. in the afternoon of that day at the Corning Tower Building, Empire State Plaza, 25th Floor - Conference Room 2509, Albany, New York 12237.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, (hereafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 23, 1994

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before May 23, 1994 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 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
April 13, 1994



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

Inquiries should be addressed to:

KAREN E. CARLSON
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
PRABHAKAR KHAROD, M.D. : CHARGES

-----X

PRABHAKAR KHAROD, M.D., the Respondent, was authorized to practice medicine in New York State on February 25, 1977 by the issuance of license number 130022 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

1. On or about May 8, 1991 the Maryland Board of Physician Quality Assurance (hereinafter the "Board") voted to charge the Respondent with the commission of prohibited acts under the Annotated Code of Maryland resulting in unprofessional conduct.
2. Respondent was notified of these charges on April 27, 1992 and a hearing was scheduled for August 5, 1992.
3. A pre-hearing conference was held on July 8, 1992 at which time negotiations were discussed. As a result, on or about July 30, 1992 Respondent entered into a Consent Order in

resolution of the charges pending against him before the Maryland Board.

4. Under the terms of the Consent Order the Board concluded that the Respondent had committed prohibited acts under §§14-404(a)(3), (19), and (22) of the Annotated Code of Maryland. The Board therefore found the Respondent guilty of unprofessional conduct and suspended Respondent's license.

5. The conduct underlying the Maryland Board's finding of unprofessional conduct consisted of Respondent's commission of two or more acts or omissions which failed to meet generally accepted standards of medical practice under the Maryland Medical Practice Act.

6. Under the terms of the Consent Order, Respondent's license to practice medicine in Maryland was suspended. The suspension order was stayed and the Respondent was placed on a period of probation for three years with the following conditions:

(a) The Respondent and those staff members engaged in billing and recordkeeping shall enroll in and successfully complete a course in the utilization of the CPT coding system. This course shall be approved by the Board and shall include instruction in medical nomenclature; designation of medical, surgical and diagnostic services; and descriptive and identifying codes for reporting medical services and procedures by physicians.

(b) The Respondent shall transcribe any written or dictated notes and retain a medical records transcription service for this work. The transcription of any office notes, hospital notes, patient exams and restoring and diagnostic test interpretations, and consultation letters or reports

is to be completed within five business days of the dictation or writing. Verification that these notes are so being transcribed is to be submitted to the Board on a quarterly basis.

(c) The Respondent is subject to peer review as ordered by the Board. The first peer review is to occur six months after the effective date of the Consent Order and thereafter on an annual basis. The Respondent agrees to follow any recommendations issued as a result of that peer review.

(d) The Respondent must enroll in and successfully complete an Orthopedic Boards review class, as approved by the Board, within one year of the effective date of the Consent Order. The course must consist of not less than 60 credit hours of continuing medical education credit. The Respondent is responsible for all costs associated with this and for submitting evidence to the Board establishing compliance.

7. The conduct set forth in the Maryland Board's complaint, which was the conduct resulting in the suspension of Respondent's license, would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically N.Y. Educ. Law §6530(3) [negligence on more than one occasion] and/or N.Y. Educ. Law §6530(5) [incompetence on more than one occasion] and/or N.Y. Educ. Law §6530(20) [conduct evidencing moral unfitness to practice medicine] and/or N.Y. Educ. Law §6530(32) [failing to accurately maintain a record for each patient] (McKinney Supp. 1994).

FIRST SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1994) by reason of 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 1-7.

DATED: Albany, New York

April 13, 1994

Peter D. Van Buren

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