



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

March 24, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Peter Klieger, M.D.
22-A Clintwood Drive
Rochester, NY 14620

David E. Ruck, Esq.
230 Park Avenue - Suite 2830
New York, New York 10169

David W. Smith, Esq.
Assistant Counsel
NYS Department of Health
5 Penn Plaza - 6th Floor
New York, NY 10001

RE: In the Matter of Peter Klieger, M.D.

Dear Dr. Klieger, Mr. Ruck and Mr. Smith:

Enclosed please find the Determination and Order (No. 93-44) 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.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 (p), 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.

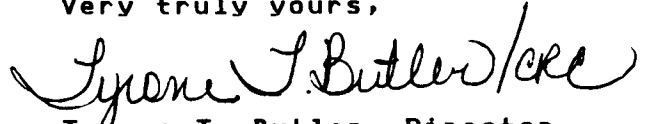
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower - Room 2503
Empire State Plaza
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.

Very truly yours,

A handwritten signature in cursive script that reads "Tyone T. Butler/crc". The signature is written in black ink and is positioned above the typed name.

Tyone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF :
PETER KLIEGER, M.D. : AND
: ORDER
-----X

ORDER NO. BPMC-93-44

A Notice of Hearing and Statement of Charges, both dated November 4, 1992, were served upon the Respondent, Peter Klieger, M.D. **ALBERT M. ELLMAN, M.D. (Chair), VICTOR B. MARROW, Ph.D. 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. A hearing was held on December 1, 1992. The Department of Health appeared by David W. Smith Esq., Assistant Counsel. The Respondent appeared by David E. Ruck, Esq. 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 Section 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 Section 6530(9)(c). 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. Peter Klieger, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on August 27, 1984 by the issuance of license number 159773 by the New York State Education Department. Respondent was registered to practice medicine in New York State for the period ending December 31, 1992. (Pet. Ex. #2).

2. On September 12, 1991, after an adjudicatory proceeding before the New York State Department of Social Services (hereinafter "DSS"), Respondent was found to have failed to keep acceptable records in violation of state regulations. (Pet. Ex. #3).

3. The DSS administrative law judge found that Respondent had been a provider in the Medicaid program. When an audit of Respondent's Medicaid patient records for the period January 1, 1988 through December 31, 1988 was attempted, Respondent was unable to produce the records. (Pet. Ex. #3).

4. Respondent commenced the private practice of medicine at an office in the Bronx in December, 1985. He gave up his private Medicaid practice in June, 1988 and took a research position at Brookhaven Laboratory in Suffolk County. Upon giving up his private practice, Respondent left the patient records in the storefront office he had been renting in the Bronx. Respondent did not ask anyone to look after his records, nor did anyone offer to do so. He made no arrangements for their security, or for his own future access to them. Respondent never ascertained who, if anyone, would be taking over the office in which he left the medical records. (14; Pet. Ex. #3).

5. Respondent did not advise the owner/manager of the building that he was leaving his records behind. Respondent did not tell the owner/manager, or anyone else associated with the premises, where he could be contacted in the future. Respondent

never made any attempt to check on the safety of his records after he left the premises in June, 1988. (Pet. Ex. #3).

6. Based upon the findings of the DSS administrative law judge, Respondent was excluded from participation in the Medicaid program for a period of five years. (Pet. Ex. #3).

7. In a Stipulation executed on January 16, 1992, Respondent agreed to pay approximately \$46,000, plus interest, in restitution for the Medicaid payments he received during the audit period. (Resp. Ex. A).

8. Respondent is board-certified in nuclear medicine. He is currently the chief of nuclear medicine at the Veteran's Administration Hospital in Batavia, New York, as well as a clinical assistant professor at the University of Rochester Medical Center. He is not in private practice. (11-12).

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 concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was found guilty of violating state regulations following an adjudicatory hearing before an administrative law judge of the Department of Social Services. The record clearly establishes the fact that Respondent failed to

maintain the medical records of a substantial number of patients following his exit from private practice in 1988.

The Hearing Committee further concluded that Respondent's conduct constituted a failure to maintain patient records which accurately reflect the evaluation and treatment of each patient, in violation of Education Law Section 6530(32). Therefore, the Hearing Committee unanimously voted to sustain the Specification of professional misconduct contained 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 addition, Respondent should be required to perform three hundred hours of community service to an indigent population, in a time and manner acceptable to the Office of Professional Medical Conduct. 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.

Medical records are an essential element in the provision of **medical care**. They must be maintained and preserved in order to assure the continuity of care throughout the course of a patient's medical history. Respondent recklessly disregarded the best interests of his patients when he failed to adequately provide for

the maintenance of his patient records following his exit from private practice in the Bronx.

The Hearing Committee has an independent responsibility to determine the sanction to be imposed based upon the DSS findings. In determining the appropriate sanction, the Committee took notice of the fact that Respondent has been disciplined by DSS. He was barred from participation in the Medicaid program for five years. In addition, he has agreed to pay approximately \$46,000 in restitution, plus interest. The Hearing Committee also took notice of the fact that no patient harm was either demonstrated or alleged by DSS or the Department of Health.

The Hearing Committee also had the opportunity to assess Respondent's attitudes regarding his misconduct. The Committee believes that Respondent is remorseful about his conduct and that he is now aware of the importance of maintaining medical records and of the physician's responsibility for those records. (See, Tr., pp. 23-24). Based upon the foregoing, the Hearing Committee determined that a more severe sanction was not warranted. A stayed suspension would not have any greater deterrent effect on Respondent than a censure and reprimand, but could negatively impact on Respondent's ability to practice medicine throughout the remainder of his career. Given the fact that Respondent failed to maintain the medical records of the indigent patients which he saw in private practice, the Hearing Committee felt that the imposition of a censure and reprimand, coupled with the requirement of

community service to an indigent population would be a more appropriate resolution to this matter.

ORDER

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

1. The Specification of professional misconduct contained in the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**;
2. Respondent shall receive a **CENSURE AND REPRIMAND**. In addition, Respondent shall perform **THREE HUNDRED HOURS** of community service, in a time and manner acceptable to the Office of Professional Medical Conduct.

DATED: Albany, New York
3/7, 1993



ALBERT M. ELLMAN, M.D. (Chair)

VICTOR B. MARROW, Ph.D.
RUFUS A. NICHOLS, M.D.

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

David E. Ruck, Esq.
230 Park Avenue, Suite 2830
New York, New York 10169

Peter Klieger, M.D.
22-A Clintwood Drive
Rochester, New York 14620

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: Peter Klieger, M.D. : PROCEEDING
: :
-----X

TO: Peter Klieger, M.D.
22-A Clintwood Drive
Rochester, New York 14620

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. 1992, as amended by ch 37, Laws of 1992) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). 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 December, 1992 at 1:00 o'clock in the afternoon of that day at 5 Penn Plaza, 6th 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 Larry Storch, Administrative Law Judge, New York State Department of Health, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, as well as the Department of Health attorney indicated below, on or before November 20, 1992.

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with Judge Storch at the address indicated above on or before November 20, 1992 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 Judge Storch 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
November 4, 1992



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

David W. Smith
Assistant Counsel
212 613-2615

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

-----X

IN THE MATTER : STATEMENT
OF : OF
PETER KLIEGER, M.D. : CHARGES

-----X

PETER KLIEGER, M.D., the Respondent, was authorized to practice medicine in New York State on August 27, 1984 by the issuance of license number 159773 by the New York State Education Department. Respondent is currently registered to practice medicine in New York State through December 31, 1992.

SPECIFICATION

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(c) (McKinney Supp. 1992) by having been found guilty in an adjudicatory proceeding of violating state regulations pursuant to a final determination where such violations would constitute professional misconduct under New York State Law:

On September 18, 1991, after an adjudicatory proceeding before the New York State Department of Social Services (DSS) at which Respondent was represented by counsel, DSS found that Respondent had

failed to keep acceptable records in violation of New York State Regulation 515.2(b)(6). Such violation constitutes professional misconduct under N.Y. Educ. Law Section 6530(32) (failing to maintain a patient record which accurately reflects the evaluation and treatment of of each patient).

DATED: New York, New York

November 4, 1992



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct