



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Lorna McBarnette
Executive Deputy Commissioner

June 4, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Octavio A. Liriano, M.D.
312 East Prospect Avenue
Mount Vernon, New York 10550

Michael A. Hiser, Esq.
Assistant Counsel
New York State Department of Health
Room 2429, Tower Building
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Octavio A. Liriano, M.D.

Dear Dr. Liriano and Mr. Hiser:

Enclosed please find the Determination and Order (No. BPMC-92-43) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

RECEIVED

JUN 08 1992

**OFFICE OF PROFESSIONAL
MEDICAL CONDUCT**

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 than 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.

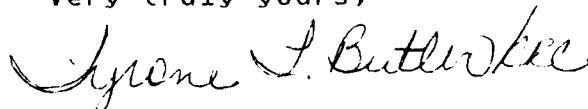
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
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 "Tyrone T. Butler". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

bcc: Mr. Briber
Dr. Vacanti
Mr. Millock
Ms. Tanner
Ms. Bohenek
Ms. Schottenfeld
Mr. Horan
SAPA File
Case File
Reading File

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

-----X
IN THE MATTER : DETERMINATION
OF : AND
OCTAVIO A. LIRIANO, M.D. : ORDER
-----X ORDER NO. BPMC-92-43

A Notice of Hearing and Statement of Charges, both dated March 31, 1992, were served upon the Respondent, Octavio A. Liriano, M.D. **THOMAS L. HAWKINS, JR, M.D. (Chair), MARGARET H. McALOON, M.D.,** and **SUMNER SHAPIRO**, 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 May 6, 1992. The Department of Health appeared by Michael A. Hiser, Esq., Assistant Counsel. The Respondent did not appear at the hearing in person, and no attorney appeared on behalf of Respondent. 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)(a)(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. Respondent was authorized to practice medicine in New York State on March 8, 1971 by the issuance of license number 108218 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. He was last registered for the period January 1, 1989 through December 31, 1990 from 105 Stevens Avenue, Mount Vernon, New York 10550. (Pet. Exhibit #2).

2. On or about December 7, 1990, Respondent was convicted of the following criminal felonies in the Supreme Court, Westchester County, State of New York: one count of grand larceny in the second degree (New York Penal Law §155.40), ten counts of

offering a false instrument for filing (New York Penal Law §175.35) and ten counts of falsifying business records (New York Penal Law §175.10). (Pet. Exhibits # 5 and 6).

3. These felony convictions were based upon a twenty-one count indictment (No. 89-0712-01) charging Respondent submitted and caused to be submitted numerous reimbursement claims which overstated the number of surgical procedures he had provided to Medicaid recipients, in reliance upon which the State of New York paid Respondent approximately \$361,962.50 to which he was not entitled. The indictment also charged that Respondent submitted false information to Computer Science Corporation, a fiscal agent of the State of New York, and that Respondent made and caused to be made entries in medical charts falsely representing that certain surgical procedures had been performed on various Medicaid recipients.

4. On March 5, 1991, Respondent was sentenced to a maximum term of three years and a minimum of one year, a mandatory surcharge of \$152.00 and ordered to pay restitution in the amount of \$379,861.50, to be paid over a five year period. (Pet. Exhibits # 5 and 6).

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 Committee concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates

that on or about December 7, 1990, Respondent was convicted of twenty-one felonies arising out of Respondent's fraudulent claims made against the New York State Medicaid program.

The Hearing Committee unanimously concluded that Respondent committed professional misconduct within the meaning of Education Law §6530(9)(a)(i), by virtue of this criminal conviction. As a result, the Hearing Committee sustained the specification of misconduct alleged in the Statement of Charges. (Pet. Ex. #1).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in the State of New York be revoked. Respondent's criminal conduct extended over a period of nearly five years and involved fraudulent claims for numerous surgical procedures which were never performed. As a result of his criminal conduct, the state was defrauded out of hundreds of thousands of dollars which were intended to be used to provide medical care to the state's medically indigent citizens.

Respondent failed to appear at these proceedings. However, it is clear from the transcript of the sentencing hearing before Justice Rosato, Supreme Court, Westchester County, that Respondent felt no remorse, regrets or shame concerning his criminal behavior. Under the circumstances, the members of the Hearing Committee unanimously concluded that revocation was the appropriate sanction to be imposed upon Respondent.


ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is SUSTAINED, and

2. Respondent's license to practice medicine in the State of New York is REVOKED.

DATED: Albany, New York
June 1, 1992


THOMAS L. HAWKINS, JR., M.D. (Chair)

Margaret H. McAloon, M.D.
Sumner Shapiro

TO: Octavio A. Liriano, M.D.
312 East Prospect Avenue
Mount Vernon, New York 10550

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