



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

March 13, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Kurt Mausert, Esq.
421 Bay Road
Queensbury, New York 12804

Shyam Sundar Mahajan, M.D.
7624-A Brislin Road
Stroudsburg, Pennsylvania 18360

Effective Date March 20, 1996

RE: In the Matter of Shyam Sundar Mahajan, M.D.

Dear Ms. Carlson, Mr. Mausert and Dr. Mahajan:

Enclosed please find the Determination and Order (No. 96-54) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

NEW YORK STATE DEPARTMENT OF HEALTH 1996

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 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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw
Enclosure

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

COPY

IN THE MATTER
OF
SHYAM SUNDAR MAHAJAN, M.D.

DETERMINATION
AND
ORDER
BPMC-96-54

A Notice of Hearing and Statement of Charges, both dated September 19, 1995, were served upon the Respondent, **SHYAM SUNDAR MAHAJAN, M.D.** **DAVID T. LYON, M.D.**, (Chair), **PETER B. KANE, M.D.** and **MR. IRVING CAPLAN**, 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. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on January 10, 1996. The Department of Health appeared by **HENRY M. GREENBERG**, General Counsel, by **KAREN E. CARLSON, ESQ.**, Associate Counsel. The Respondent did not appear personally but was represented by **KURT MAUSERT, 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 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 Sections 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 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. Respondent was authorized to practice medicine in New York State on September 16, 1974, by the issuance of license number 121638 by the New York State Education Department. (Pet. Ex. #3)
2. Respondent, on or about May 9, 1994, was convicted of seven (7) misdemeanors in the Monroe County Court of Common Pleas in the Commonwealth of Pennsylvania. (Pet. Ex. 5)
3. Respondent plead Nolo Contendere to, among other crimes, two (2) counts of the crime of Theft by Deception in violation of 18 Pa. C.S. §3922(a)(1). (Pet Ex. 5)
4. The Court sentenced Respondent to a five (5) year term of probation, a Twenty Four Thousand Dollar (\$24,000.00) fine, 600 hours of community service and restitution of \$500. (Pet. Ex.5)
5. On or about June 6, 1995 the Commonwealth of Pennsylvania, Bureau of Professional and Occupation Affairs, State Board of Medicine (hereafter, "the Board") disciplined Respondent for being convicted in the Monroe County Court of Common Pleas, Commonwealth of

Pennsylvania, of seven (7) misdemeanors. (Pet. Ex. 4)

6. More specifically, Respondent was disciplined based on his pleas of nolo contendere to the following:
 - (a) two (2) counts of Theft by Deception in violation of 18 Pa.C.S. §3922(a)(1)
 - (b) three (3) counts of the Drug Act in violation of 35 P.S. §§780-113(a)(7), (a)(21)
 - (c) one (1) count of the Pharmacy Act in violation of 18 P.S. §901(a)
 - (d) one (1) count of the Board Regulations in violation of 49 Pa. Code §16.93 (Pet. Ex. 4 and 5)
7. The criminal convictions stem from defrauding Medicaid patients, selling sample drugs, dispensing drugs without proper packaging, and failing to maintain proper records concerning these drugs. (Pet. Ex. 5)
8. The Board entered into a Consent Agreement with Respondent whereby the Respondent agreed to the Board imposed discipline of a five (5) year suspension of Respondent's medical license, seven (7) months in actual suspension with the remaining time stayed and on probation and a fine of Five Thousand (\$5,000). (Pet. Ex. 4)

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 unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was convicted of Medicaid fraud and numerous drug and pharmacy regulations in violation of Pennsylvania Law. Section 6530(9)(a)(iii) of the Education Law defines professional misconduct as "being 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 Law." In addition, the Pennsylvania, Bureau of Professional and Occupational Affairs, State Board of Medicine, disciplined the Respondent for the aforementioned criminal and state violations. As a result, the Pennsylvania Board suspended Respondent's license with a partial stay that includes probation. Section 6530(9)(d) of the Education Law defines professional misconduct in part as having his or her license to practice medicine suspended after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension would, if committed in New York State, constitute professional misconduct under the laws of New York State. As a result, the Hearing Committee voted to sustain the First and Second Specifications of professional misconduct contained within 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's license to practice medicine in New York State should be suspended for a five (5) year period, said suspension to be stayed, and that Respondent be placed on probation during said five (5) year period of suspension. The period of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in writing, that Respondent has commenced a medical practice in New York State. The complete terms of probation are attached to this Determination and Order in Appendix II. 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.

Although Respondent did not personally appear at the hearing, Respondent's attorney submitted an affidavit from Respondent along with numerous letters of recommendation from other physicians.

In reviewing these materials with respect to mitigation of the penalty, the Hearing Committee finds that Respondent appears to be well thought of by his colleagues in his community. The Pennsylvania Court sentenced Respondent to five (5) years probation, Twenty-Four Thousand Dollars (\$24,000) in fines, 600 hours of community service, payment of Five Hundred (\$500) in restitution and payment of court costs. In addition, the Pennsylvania Medical Board suspended Respondent's license for five (5) years, stayed the suspension with an actual suspension of seven (7) months and fined Respondent Five Thousand Dollars (\$5,000). The Hearing Committee is satisfied that Respondent has been sufficiently punished for his crimes and violations. They do not believe that revocation is warranted because personal greed does not appear to be a factor in that Respondent did not profit immensely from his misdeeds and he paid restitution in the amount of \$500.

The Hearing Committee, however, has an obligation to protect the citizens of New York State in the event that Respondent should move his practice to New York State. Therefore, a five (5) year stayed suspension, with general terms of probation shall be imposed upon Respondent's New York license. This penalty shall be tolled until such time that Respondent commences to practice medicine in New York State.

ORDER

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

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED**.
2. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of five (5) years , said suspension to be **STAYED**.
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.
4. The periods of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in accordance with the Terms of Probation, of the fact that he has commenced a medical practice in New York State.

DATED: Albany, New York

3/11 1996



DAVID T. LYON
(Chair)

PETER B. KANE, M.D.
MR. IRVING CAPLAN

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

Kurt Mausert, Esq.
421 Bay Road
Queensbury, New York 12804

Shyam Sundar Mahajan, MD
7624-A Brislin Road
Stroudsburg, Pennsylvania 18360

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
SHYAM SUNDAR MAHAJAN, M.D. : PROCEEDING

-----x

TO: Shyam Sundar Mahajan, M.D.
7624-A Brislin Road
Stroudsburg, Pennsylvania 18360

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. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 15th day of November, 1995 at 10:00 a.m. in the forenoon of that day at Empire State Plaza, Meeting Room E, Concourse, 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, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before November 1, 1995.

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 November 1, 1995 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 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: Albany, New York
September 19, 1995

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

Inquiries should be addressed to:

Karen Eileen Carlson
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
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
SHYAM SUNDAR MAHAJAN, M.D. : CHARGES

-----X

Shyam Sundar Mahajan, M.D., the Respondent, was authorized to practice medicine in New York State on September 16, 1974 by the issuance of license number 121638 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. On or about June 6, 1995 the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs, State Board of Medicine [hereafter, "the Board"] disciplined Respondent for being convicted in the Monroe County Court of Common Pleas, Commonwealth of Pennsylvania, of seven misdemeanors.
2. More specifically, Respondent was disciplined based on his pleas of nolo contendere to the following:
 - (a) two counts of Theft by Deception in violation of 18 Pa.C.S. §§3922(a)(1)
 - (b) three counts of the Drug Act in violation of 35 P.S. §§780-113(a)(7), (a)(21)

- (c) one count of the Pharmacy Act in violation of 18 P.S. §901(a)
- (d) one count of the Board Regulations in violation of 49 Pa. Code §16.93
3. The criminal convictions stem from defrauding Medicaid patients, selling sample drugs, dispensing drugs without proper packaging, and failing to maintain proper records concerning these drugs.
4. The Board entered into a Consent Agreement with Respondent whereby the Respondent agreed to the Board imposed discipline of a five year suspension of Respondent's medical license, seven months in actual suspension with the remaining time stayed and on probation.
5. The conduct underlying the Board's discipline would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(9)(a) (McKinney Supp. 1995) [being convicted of committing an act constituting a crime] and under N.Y. Educ. Law § 6530(2) (McKinney Supp. 1995) [practicing the profession fraudulently].
6. Respondent, on or about May 9, 1994, was convicted of seven misdemeanors in the Monroe County Court of Common Pleas in the Commonwealth of Pennsylvania.
7. Respondent plead Nolo Contendere to, among other crimes, two counts of the crime of Theft by Deception in violation of 18 Pa. C.S. § 3922(a)(1).

8. Respondent was sentenced to a two year term of probation, a five thousand dollar fine, community service and restitution.
9. The act upon which Respondent was convicted constituted a crime under the law of Pennsylvania and, if committed in New York State, would have constituted a crime under New York State law, specifically N.Y. Penal Law §155.25.

SPECIFICATIONS

FIRST SPECIFICATION

DISCIPLINE IN ANOTHER STATE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1995) by reason of his having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action 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, 2, 3, 4, and 5.

SECOND SPECIFICATION
CONVICTION OF A CRIME

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(a)(iii) (McKinney Supp. 1995) by reason of his committing an act constituting a crime under the laws of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law, in that Petitioner charges:

- 2. The facts in Paragraphs 6, 7, 8, and 9.

DATED: *September 19, 1995*
Albany, New York

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

APPENDIX II

TERMS OF PROBATION

1. Respondent shall conduct himself at all times 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. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

5. Prior to the commencement of a medical practice in New York State, Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department.

6. Respondent's practice of medicine shall be monitored by a physician monitor, board certified in an appropriate specialty, ("practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of the proposed practice monitor will be determined to be a violation of probation.

(a) The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or his/her designee, on a schedule to be determined by the office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis and shall examine a random selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall immediately be reported to the office of Professional Medical Conduct by the monitor.

(b) Any change in practice monitor must be approved in writing, in advance, by the Office of professional Medical Conduct.

(c) It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.

7. Respondent will maintain legible and complete medical records which accurately reflect evaluation and treatment of patients. Records will contain a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment. In cases of prescribing, dispensing, or administering of controlled substances, the medical record will contain all information required by state rules and regulations regarding controlled substances.

8. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.

9. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On 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 Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.