



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

September 24, 1997

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Keith L. Barnard, M.D.
1476 East 48th Street
Brooklyn, New York 11234

Keith L. Barnard, M.D.
c/o Schuylkill Corrections Institution
Minersville, PA 17954

Michele Y. Tong, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Keith L. Barnard, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 97-230) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 penalties **other than suspension or revocation** 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.

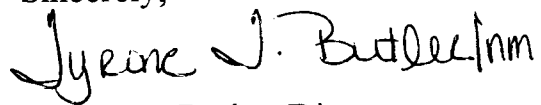
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
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,

Handwritten signature of Tyrone T. Butler in black ink, followed by the initials "nm".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
OF
KEITH L. BARNARD, M.D.

DETERMINATION
AND
ORDER

BPMC-97-230

RICHARD D. MILONE, M.D., (Chair), THOMAS O. MULDOON, M.D.
and LOIS A. JORDAN, duly designated members of the State Board for Professional Medical
Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public
Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served
as the Administrative Officer.

The Department of Health appeared by MICHELE Y. TONG, ESQ., Assistant
Counsel and DANIEL GUENZBURGER, ESQ., Assistant Counsel.

Respondent, KEITH L. BARNARD, M.D., did not appear personally but was
represented by MARSHA WESLEY BARNARD, M.D., his wife and by BEN ADLER, a
family advisor.

A Hearing was held on August 28, 1997. Evidence was received and examined.

A Transcript of the proceeding was made. After consideration of the record, the Hearing
Committee issues this Determination and Order, pursuant to the Public Health Law and the
Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§ 230 et seq. of the Public Health Law of the State of New York [hereinafter "P.H.L."]).

This case, brought pursuant to P.H.L. § 230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

KEITH L. BARNARD, M.D., ("**Respondent**") is charged with professional misconduct within the meaning of § 6530(9)(a)(ii) of the Education Law of the State of New York ("**Education Law**"), to wit: professional misconduct ... by reason of being convicted of committing an act constituting a crime under Federal Law (Petitioner's Exhibit # 1 and §6530[9][a][ii] of the Education Law).

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

FINDINGS OF FACT

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. Evidence which conflicted with any findings of the Hearing Committee was considered and rejected. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

¹ P.H.L. § 230(10)(p), fifth sentence.

1. Respondent was authorized to practice medicine in New York State on March 11, 1983 by the issuance of license number 153331 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)².

2. Respondent is currently registered to practice medicine in the state of New York (Petitioner's Exhibit # 2).

3. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (Respondent was personally served and had no objection to the personal service effected); (P.H.L. § 230[10][d]); (Petitioner's Exhibit # 1); [T-10]³.

4. On September 18, 1996, Respondent was found guilty, in the United States District Court, Southern District of New York ("Court") of violation of one count of Title 18 of the United States Code § 371 (Conspiracy to Commit Medicaid Fraud and Mail Fraud) and violation of two counts of Title 18 of the United States Code § 1341 (Mail Fraud) (Petitioner's Exhibit # 3).

5. In essence, Respondent was found guilty, after trial, of defrauding Medicaid by being a "script doctor". A "script doctor" gives prescriptions, that are not medically necessary, to patients who will then go and sell the drugs on the street (Petitioner's Exhibit # 4).

6. As a result of said finding of guilt, on February 21, 1997, Respondent was sentenced to thirty (30) months in prison; supervised release for a term of two (2) years; ordered to make restitution to the New York State Department of Social Services in the amount of \$157,152.00 and to participate in drug testing and treatment (Petitioner's Exhibits # 3 & # 4).

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or submitted on behalf of Dr. Keith Barnard (Respondent's Exhibit).

³ Numbers in brackets refer to Hearing transcript page numbers [T-].

7. On July 30, 1993, a Hearing Committee of the State Board for Professional Medical Conduct found that Respondent had made a false statement in an employment application which constituted fraudulent practice of medicine (Petitioner's Exhibit # 6).

8. Respondent was censured and reprimanded for the above mentioned fraudulent conduct (Petitioner's Exhibit # 6).

9. Respondent submitted character letters mostly regarding Respondent's need to practice medicine; provide care to patients in "an economically deprived area"; and his family responsibilities (Respondent's Exhibit # 1); [T-25].

10. Respondent has not made any payments towards the restitution amount ordered by the Court in the sum of \$157,152.00 [T-41].

11. Respondent has not filed a written answer to each (or any) of the charges and allegations contained in the Statement of Charges (P.H.L. § 230[10][p]); [T-25-26].

12. Paragraphs A and A1 of the Factual Allegations contained in the July 9, 1997 Statement of Charges are deemed admitted by the Hearing Committee by operation of Law (P.H.L. § 230[10][p]); (See Appendix I).

13. The Hearing Committee finds that the charges of professional misconduct within the meaning of Education Law § 6530(9)(a)(ii) are deemed admitted by operation of Law (P.H.L. § 230[10][p]); (Specification of Criminal Conviction [federal]); (See Appendix I).

CONCLUSIONS OF LAW

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

The Hearing Committee concludes that the Factual Allegations, from the July 9, 1997 Statement of Charges are SUSTAINED

The Hearing Committee concludes and determines, based on all of the evidence presented, that the SPECIFICATION OF CRIMINAL CONVICTION (Federal) is SUSTAINED.

I Professional Misconduct under §6530(9)(a)(ii) of the Education Law.

The Hearing Committee concludes that the Department of Health has shown, by a preponderance of the evidence, that Respondent was convicted of committing a crime under Federal Law. Respondent's conviction constitutes professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

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 P.H.L. § 230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The record establishes that Respondent was convicted of committing crimes under Federal Law. Respondent was convicted of committing frauds on the Medicaid system. The frauds occurred when Respondent knowingly and intentionally gave prescriptions to patients that were not medically necessary. Those patients then sold the drugs on the streets to support their illegal drug habits. The Court indicated that there was clear evidence of fraudulent prescription patterns by Respondent and his co-conspirators.

The Court further indicated that Respondent's conduct was sustained over a substantial period of time and it was profitable to Respondent far beyond any of his previous earnings. The Hearing Committee believes that Respondent's conduct was done to benefit his own personal greed. There is also some indication that Respondent may be a drug user as shown by the positive testing for cocaine and marijuana, on more than one occasion, during his release before sentencing. The Hearing Committee is concerned about Respondent's drug use and the failure of Respondent to abide by the Court's conditions and instructions.

The Hearing Committee believes that Respondent has shown a lack of honesty which has manifested itself on a number of occasions. The Hearing Committee does not believe that there was a lack of understanding by Respondent or that the Medicaid fraud were just unintentional errors, mistakes, or omissions.

It is clear from the testimony presented and the "character letters" (Respondent's Exhibit # 1) submitted that Respondent and his friends and family are in total denial of the criminal conviction and seriousness of the Medicaid fraud charges. The Hearing Committee does not believe that Respondent was a victim of circumstances, nor that Respondent did not know or participate in the fraudulent scheme, nor that Respondent was duped by someone else's deceit or manipulation.

Although the Hearing Committee has not had the benefit of the trial transcript, the sentencing minutes (Petitioner's Exhibit # 4) also provide some implications that there were some patients of Respondent who were truly ill and did not receive appropriate care.

The Hearing Committee is also very troubled by attempts by the witness and the character letters to imply that poor neighborhoods will be harmed by the loss of Respondent. Individuals living in economically deprived areas deserve the same care, treatment and honesty

as individuals living in other areas. It is clear from the record that Respondent has failed to provide the type of care needed in the manner consistent with the practice of good medicine.

The Hearing Committee believes that censure, reprimand, and monetary penalties are not appropriate under the circumstances. Limitations on Respondent's license and education or retraining are also inappropriate in that there is insufficient proof in the record regarding Respondent's medical ability or knowledge. The Hearing Committee also rejected the possibility of allowing Respondent to practice in a structured non-billing environment, such as a P.H.L. Article 28 facility because of Respondent's history of dishonesty.

The record establishes that Respondent committed violations of Federal Laws. Respondent's lack of integrity is evident by his conduct.

The Hearing Committee was not given any reason to believe that Respondent's actions could not occur again. Respondent's acts were deliberate, not accidental and not unconscious.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the taxpayers and the safety of the people of New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

All other issues raised have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

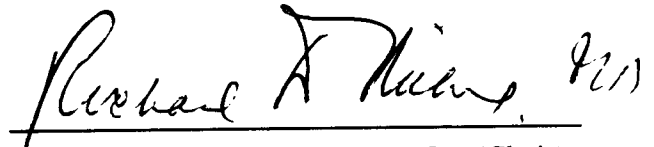
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

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: New York, New York
September 18, 1997



**RICHARD D. MILONE, M.D., (Chair),
THOMAS O. MULDOON, M.D.
LOIS A. JORDAN**

Keith L. Barnard, M.D.
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Brooklyn, NY 11234

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Minersville, PA 17954

Michele Y. Tong, Esq.
Assistant Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

APPENDIX I

IN THE MATTER
OF
KEITH BARNARD, M.D.

STATEMENT
OF
CHARGES

KEITH BARNARD, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 11, 1983, by the issuance of license number 153331 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 18, 1996, Respondent was found guilty after trial, at which he was represented by counsel, of one count of Conspiracy to Commit Medicaid Fraud and Mail Fraud in violation of Title 18, United States Code, Section 371, and two counts of Mail Fraud in violation of Title 18, United States Code, Section 1341.

1. Thereafter Respondent was sentenced to 30 months in prison, supervised release of two years and ordered to pay restitution in the amount of \$157,152.00.


SPECIFICATION
CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1997) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the

following:

1. Paragraphs A and A1.

DATED: July 7, 1997
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct