



# 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*

Dennis P. Whalen  
*Executive Deputy Commissioner*

February 3, 1997

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David W. Smith, Esq.  
NYS Department of Health  
5 Penn Plaza - Suite 601  
New York, New York 10001

Marie McKenzie, R.P.A.  
38 Waterford Drive  
Wheatley Heights, New York 11798

Marie McKenzie, R.P.A.  
C/O Metropolitan Correction Center  
150 Park Row  
New York, New York 10007

### **RE: In the Matter of Marie McKenzie, R.P.A.**

Dear Mr. Smith and Ms. McKenzie:

Enclosed please find the Determination and Order (No. 97-35) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

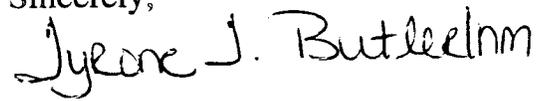
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke at the end.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

COPY

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

-----X

IN THE MATTER :

DETERMINATION

OF :

AND

MARIE MCKENZIE, R.P.A. :

ORDER

-----X

BPMC-97-35

A Notice of Referral Proceeding and Statement of Charges, both dated November 22, 1996, were served upon the Respondent, Marie McKenzie, R.P.A. **CAROLYN C. SNIPE (Chair), WILLIAM K. MAJOR, JR., M.D., and NOEL L. COHEN, 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, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by David W. Smith, Esq., Associate Counsel. The Respondent failed to appear in person and was not represented by counsel. A hearing was held on January 22, 1997. 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 §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 §6530(9)(a)(iii) [having been convicted of a crime under federal law. 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. Marie McKenzie, R.P.A. (hereinafter, "Respondent"), was authorized to practice as a physician's assistant in New York State on October 1, 1976 by the issuance of license number 000579 by the New York State Education Department. (Pet. Ex. #2).

2. On or about February 23, 1996, Respondent was convicted in the United States District Court for the Southern District of New York, following a trial, of mail fraud and conspiracy to commit mail fraud against the New York State Medicaid program. The activities in which Respondent participated resulted in \$4,550,470.53 in fraudulent payments to Respondent and her co-conspirators. (Pet. Ex. #3 and #4).

3. Respondent was sentenced to forty-six (46) months in Federal prison. This term of incarceration is to be followed by a three-year period of supervised release. In addition, Respondent was ordered to pay \$30,000.00 in restitution. (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 concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was convicted of one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. §371, and three counts of mail fraud, in violation of 18 U.S.C. §1341. These acts constitute crimes under federal law. Accordingly, the Committee voted to sustain the specification of professional misconduct alleged 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's license to practice medicine in New York State should be revoked. 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.

Respondent's conduct represents a severe breach of the public trust which is granted to those individuals authorized to practice as physician's assistants. She participated in a massive fraud against the Medicaid program and the people of this state. As a result, scarce health care resources were diverted from those in need. Respondent failed to present any evidence

which might tend to mitigate the sanction to be imposed. Under the circumstances, revocation is the only appropriate sanction.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York  
1/30, 1997



**CAROLYN C. SNIPE (CHAIR)**

WILLIAM K. MAJOR, JR., M.D.  
NOEL L. COHEN, M.D.

AM

TO: David W. Smith, Esq.  
Associate Counsel  
New York State Department of Health  
5 Penn Plaza - Suite 601  
New York, New York 10001

Marie McKenzie, R.P.A.  
38 Waterford Drive  
Wheatley Heights, New York 11798

Marie McKenzie, R.P.A.  
C/O Metropolitan Correction Center  
150 Park Row  
New York, New York 10007

APPENDIX I

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

IN THE MATTER  
OF  
MARIE McKENZIE, R.P.A.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: MARIE McKENZIE, R.P.A.  
38 Waterford Drive  
Wheatley Heights, New York 11798

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on January 22, 1997, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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 the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place.

433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748) (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1996) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

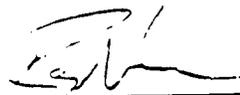
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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: New York, New York  
*November 24* 1996



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

DAVID W. SMITH  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2617

IN THE MATTER  
OF  
MARIE McKENZIE, R.P.A.

STATEMENT  
OF  
CHARGES

MARIE McKENZIE, R.P.A., Respondent, was authorized to practice as a physician's assistant in New York State on October 1, 1976 by issuance of license number 000579 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about February 23, 1996, Respondent, after trial at which she was represented by counsel, was convicted in the United States District Court for the Southern District of New York, of mail fraud and conspiracy to commit mail fraud involving the New York State Medicaid Program.
1. The activities in which Respondent participated caused the Medicaid program to lose \$4,550,470.53.
  2. Respondent was sentenced to forty-six (46) months in Federal prison.

SPECIFICATIONS

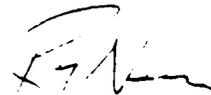
FIRST SPECIFICATION

CONVICTED OF A CRIME

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(a)(iii) (McKinney Supp. 1996) by having been convicted of a crime under federal law, namely 18 USCA 371 and 1341, (Conspiracy to commit mail fraud and mail fraud), as alleged in the facts of the following:

1. Paragraphs A and A1- 2.

DATED: November 22, 1996  
New York, New York



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct