



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*

Karen Schimke  
*Executive Deputy Commissioner*

July 22, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Joseph Muigai, P.A.  
P.O. Box 168  
Watertown Correctional Facility  
Watertown, New York 13601

**RE: In the Matter of Joseph Muigai, P.A.**

Effective Date: 07/29/96  
Dear Ms. Carlson and Mr. Muigai:

Enclosed please find the Determination and Order (No.96-44) of the Professional Medical Conduct Administrative Review Board 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Empire State Plaza  
Corning Tower, Room 438  
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T Butler, Director  
Bureau of Adjudication

TTB rlw

Enclosure

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

**COPY**

IN THE MATTER  
OF  
JOSEPH MUIGAI, R.P.A.

ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB NO. 96-44

The Administrative Review Board for Professional Medical Conduct (Review Board) sustains a Determination by a Hearing Committee on Professional Medical Conduct (Hearing Committee) finding **JOSEPH MUIGAI, R.P.A.** guilty of professional misconduct. The Committee's Determination was consistent with their finding that the Respondent was convicted on criminal charges, arising from a conspiracy to defraud the Medicaid Program. The Board also sustains the Hearing Committee's Determination to revoke the Respondent's registration as a Physician's Assistant in New York State.

**PROCEDURAL HISTORY**

The Hearing Committee<sup>1</sup> rendered their Determination on March 8, 1996. The Respondent then filed a Notice requesting a review of the Determination, which the Board received on March 22, 1996. The Notice stayed the penalty against the Respondent, automatically (see Public Health Law Section 230-c(4)(a)). The Respondent filed a review brief on his own behalf, which the Board received on April 4, 1996. The Respondent did not provide a copy of the brief to the Bureau of Professional Medical Conduct (Petitioner). After receiving a copy of the Respondent's brief from the Review Board's Administrative Officer, **KAREN EILEEN CARLSON, ESQ.** filed a reply for the Petitioner, which the Board received on April 18, 1996.

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<sup>1</sup>Trena DeFranco, Chair, Margery W. Smith, M.D. and Steven V. Grabiec, M.D. comprised the Committee. Administrative Law Judge Michael P. McDermott served as the Committee's Administrative Officer.

Review Board members **ROBERT M. BRIBER, WINSTON C. PRICE, M.D., EDWARD C. SINNOTT, M.D., SUMNER SHAPIRO** and **WILLIAM A. STEWART, M.D.** held deliberations in this case on May 3, 1996. Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer. The Board has considered the record below and the briefs which the parties have submitted.

### **THE BOARD'S SCOPE OF REVIEW**

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

### **HEARING COMMITTEE DETERMINATION**

The Petitioner brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York. Education Law Section 6530(9)(a)(i) defines professional misconduct as being convicted of a crime under New York State Law. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this case found that the Petitioner had met its burden of proof, by establishing that the Respondent had been convicted of a crime on June 5, 1995 in New York State Supreme Court for New York County. On that date, the Respondent entered a guilty plea to one count of Grand Larceny in the First Degree, a Class B Felony and one count of Grand Larceny in the Second Degree, a Class C Felony. The Supreme Court sentenced the Respondent to two and one-half years to seven and one-half years incarceration. The Committee found that the Respondent's criminal conviction resulted from submitting false claims to the Medicaid Program in excess of one million dollars. The Committee found that the claims falsely represented that various physicians had examined, treated and prescribed pharmaceuticals to Medicaid recipients, when in fact the Medicaid recipients had not been so examined, treated or prescribed for.

The Committee voted to revoke the Respondent's registration as a Physician's Assistant in New York State. The Committee concluded that the Respondent had been convicted of a serious crime and that there was no evidence in mitigation of the charges. The Committee also noted that the Respondent had a history of misconduct. The Respondent entered a guilty plea in New York County Supreme Court on November 15, 1984 for conspiracy in the Fifth Degree. This plea arose from an indictment that charged that the Respondent, a person not authorized to practice medicine, had attempted to obtain, by fraudulent means, a diploma awarding the Degree of Doctor of Medicine. Following that conviction, the Commissioner of Education suspended the Respondent's registration in September, 1988 for three years, with the last two years stayed.

#### **REQUESTS FOR REVIEW**

The Respondent's brief asks the Review Board to reconsider the Committee's Determination. The Respondent states that he worked in a facility involved in the criminal charges against him, but that he resigned his position as soon as learning there were irregularities going on in the facility. The

Respondent claims to have done charity work after leaving that facility, by serving patients with alcohol and drug problems or who suffer from AIDS or TB. The Respondent argues that he never harmed or injured anyone.

The Respondent notes that he requested a postponement in the hearing to a later date in 1996 so that he could attend the hearing, hire a lawyer and obtain letters from previous employers. The Hearing Committee denied the postponement.

The Petitioner argues that the Hearing Committee's Determination is consistent with the Committee findings and conclusions. The Petitioner asserts that the Respondent's two felony convictions involving excessive monetary gain through Medicaid fraud form a sufficient basis to revoke the Respondent's registration as a Physician's Assistant.

#### **REVIEW BOARD DETERMINATION**

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty on two felony counts for Medicaid Fraud. We reject the Respondent's complaints concerning the Committee's refusal to postpone his hearing. There is no obligation on a Hearing Committee to delay a proceeding to await a Respondent's release from incarceration.

The Review Board votes to sustain the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State. The Board finds no mitigation in the Respondent's claim that he left the facility upon becoming aware of irregularities. The Respondent entered a guilty plea to two felony counts involving defrauding Medicaid of one million dollars. The Respondent's conduct was serious and extensive. Further, the Respondent has a past history of criminal misconduct and professional discipline. The penalties from that prior behavior have failed to rehabilitate the Respondent or deter him from future misconduct. The Respondent's fraud against the Medicaid Program warrants revocation. The prior and instant criminal conduct establishes a pattern of fraudulent activity demonstrating that the Respondent is not fit to practice as a physician's assistant.

**ORDER**

**NOW**, based upon this Determination, the Review Board issues the following **ORDER**:

- 1 The Review Board **SUSTAINS** the Hearing Committee's March 8, 1996 Determination finding the Respondent guilty of professional misconduct.
  
- 2 The Review Board **SUSTAINS** the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

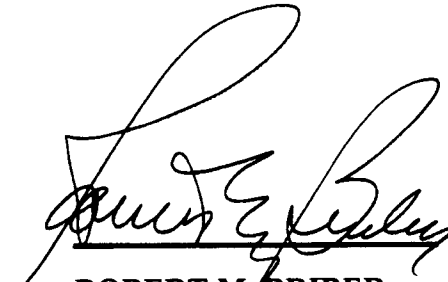
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF JOSEPH MUGAI, R.P.A.**

**ROBERT M. BRIBER**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr. Mugai.

**DATED: Schenectady, New York**

7/5, 1996



**ROBERT M. BRIBER**

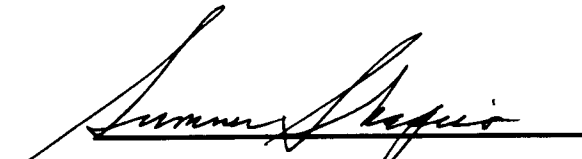


**IN THE MATTER OF JOSEPH MUGAI, R.P.A.**

**SUMNER SHAPIRO**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr. Mugai.

**DATED: Delmar, New York**

July 19, 1996

  
**SUMNER SHAPIRO**

**IN THE MATTER OF JOSEPH MUGAI, R.P.A.**

**EDWARD C. SINNOTT, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr. Mugai

**DATED: Roslyn, New York**

*July 5*, 1996

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line. There is a small mark at the end of the signature.

**EDWARD C. SINNOTT, M.D.**

**IN THE MATTER OF JOSEPH MUGAI, R.P.A.**

**WILLIAM A. STEWART, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr. Mugai.

**DATED: Syracuse, New York**

*5 July*, 1996

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above the printed name.

**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF JOSEPH MUGAI, R.P.A.**

**WINSTON S. PRICE, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr. Mugai.

**DATED: Brooklyn, New York**

7/10, 1996

A handwritten signature in cursive script, appearing to read "Winston S. Price, M.D.", is written over a horizontal line.

**WINSTON S. PRICE, M.D.**