

**DOH 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*

September 30, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Bradley C. Mohr, Esq.  
NYS Department of Health  
Corning Tower Room 2503  
Empire State Plaza  
Albany, New York 12237

Avtandil Papiasvili, M.D.  
351 Victory Boulevard  
New Rochelle, New York 10804

Ellyn I. Bank, Esq.  
34 East 69th Street  
New York, New York 10021

**RE: In the Matter of Avtandil Papiasvili, M.D.**

Dear Mr. Mohr, Dr. Papiasvili and Ms. Bank:

Enclosed please find the Determination and Order (No. 97-236) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

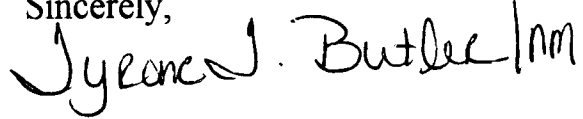
All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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,  
nm

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

COPY

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

-----X  
IN THE MATTER : DETERMINATION  
OF :  
AVTANDIL PAPIASVILI, M.D. : ORDER  
-----X

BPMC-97-236

A Notice of Referral Proceeding and Statement of Charges, both dated July 24, 1997, were served upon the Respondent, Avtandil Papiasvili, M.D. **STEPHEN A. GETTINGER, M.D. (Chair), DAVID SIBULKIN, M.D., and EUGENIA HERBST,** 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 Bradley C. Mohr, Esq., Assistant Counsel. The Respondent appeared by Ellyn I. Bank, Esq. A hearing was held on September 9, 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)(i) [conviction of committing a crime under New York State 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. Avtandil Papiasvili, M.D. (hereinafter, "Respondent"),

was authorized to practice medicine in New York State on June 3, 1983 by the issuance of license number 154318 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine. (Pet. Ex. #2).

2. On October 25, 1996, in the Supreme Court of New York, County of New York (Case No. 9315-96), Respondent entered a plea of guilty to the crime of grand larceny in the third degree - a violation of Penal Law §155.35. On February 27, 1997, Respondent was sentenced to a conditional discharge and ordered to pay restitution in the amount of \$117,000.00. (Pet. Ex. #3).

3. The conduct resulting in the conviction involved submitting fraudulent claims under the New York Medical Assistance Program, commonly known as Medicaid. Respondent submitted claims which falsely represented that certain services had been provided, i.e., individual medical psychotherapy, to various Medicaid recipients, when in fact such services had not been provided. (Pet. Ex. #3).

#### **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 clearly demonstrates that, by virtue of his guilty pleas, Respondent was convicted of committing grand

larceny in the third degree. This constitutes a crime under New York State law. Accordingly, the Committee voted to sustain the specification of professional misconduct.

#### 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 period of three (3) years. The final thirty (30) months of this suspension shall be stayed, with Respondent placed on probation. The complete terms of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein. 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 engaged in a calculated course of fraudulent conduct lasting more than two years. As part of his fraudulent scheme, Respondent submitted claims to the Medicaid program for non-existent psychotherapy visits rendered in his private practice. By doing so, Respondent unlawfully obtained over \$100,000.00 from the Medicaid program. A fraudulent scheme of this magnitude would normally warrant revocation, in the absence of strong mitigating factors. Upon careful consideration of the record, the Hearing Committee determined that certain mitigating factors do warrant a lessening of the sanction to be imposed on

Respondent.

The Hearing Committee heard testimony from Robert J. Berk, Ph.D., who served for a time as Respondent's psychotherapist. Dr. Berk testified that Respondent was under severe financial and emotional pressure when he began his fraudulent conduct, and that Respondent was self-medicating with psychotropic drugs. He felt that these circumstances significantly impaired Respondent's judgement. Dr. Berk further testified that following a period of treatment, Respondent was able to address his feelings of guilt and take steps to get his life back on track. Respondent, acting through counsel, approached the Special Prosecutor's office and turned himself in. He pled guilty and agreed to make full restitution.

The mere fact that Respondent was under financial and emotional pressure does not excuse the commission of a calculated scheme to defraud the government. However, the Committee placed great weight on the fact that Respondent sought clinical help when necessary and voluntarily came forward to admit his guilt. Accordingly, the Committee declined to revoke Respondent's medical license.

Nevertheless, the Hearing Committee believes that Respondent's actions constitute a breach of the public trust and warrant a significant sanction. The Committee unanimously determined that a three year suspension, with six months actually suspended, and the remainder stayed and Respondent placed on probation, will adequately punish Respondent and serve as a deterrent to other physicians. More importantly, both Respondent



and Dr. Berk acknowledge that Respondent would benefit from further psychotherapy. As a result, the terms of probation shall include a requirement that Respondent resume a course of treatment with Dr. Berk, or another therapist acceptable to the Director of the Office of Professional Medical Conduct.

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 **SUSPENDED** for a period of **THREE (3) YEARS.** The final thirty (30) months of this suspension shall be **STAYED** and Respondent shall be placed on probation. The complete terms of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein;

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: Troy, New York  
Sept 25 1997

  
**STEPHEN A. GETTINGER, M.D. (CHAIR)**  
DAVID SIBULKIN, M.D.  
EUGENIA HERBST

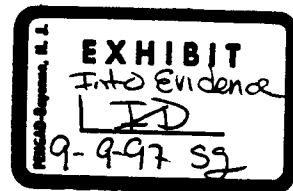
TO: Bradley C. Mohr, Esq.  
Assistant Counsel  
New York State Department of Health  
Tower Building - Room 2503  
Albany, New York 12237

Avtandil Papiasvili, M.D.  
351 Victory Boulevard  
New Rochelle, New York 10804

Ellyn I. Bank, Esq.  
34 East 69th Street  
New York, New York 10021

APPENDIX I

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



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IN THE MATTER : NOTICE OF  
OF : REFERRAL  
AVTANDIL PAPIASVILI, M.D. : PROCEEDING

-----X

TO: AVTANDIL PAPIASVILI, M.D.  
351 Victory Blvd  
New Rochelle, New York 10804

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20 th day of August, 1997 at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

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, 5th Floor, 433 River Street, Troy, New York 12180, 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 August 10, 1997.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to 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 an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before August 10, 1997 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  
July 24, 1997



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

Inquiries should be addressed to:

Bradley Mohr, Esq.  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2503  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282



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

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IN THE MATTER : STATEMENT  
OF : OF  
AVTANDIL PAPIASVILI, M.D. : CHARGES

-----X

AVTANDIL PAPIASVILI, M.D., the Respondent, was authorized to practice medicine in New York State on JUNE 3, 1983, by the issuance of license number 154318 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. Respondent on or about October 25, 1996, in the Supreme Court of New York, County of New York Case No. 9315-96 entered a plea of guilty to the crime of Grand Larceny in the 3rd Degree, in violation of Penal Law Section 155.35. On February 27, 1997, Respondent was sentenced to a Conditional Discharge and Ordered to pay restitution in the sum of \$117,000.00.

2. The conduct resulting in the conviction involved submitting fraudulent claims under the New York Medical Assistance (TITLE XIX) Program commonly known as Medicaid. Respondent submitted or caused to be submitted to Computer Sciences Corporation, a fiscal agent for the State of New York claims which falsely represented certain services had been provided, i.e. Individual Medical Psychotherapy to various

Medicaid recipients, when in fact such services had not been provided.

3. The conduct constitutes professional misconduct under New York Education Law, namely §6530(9)(a)(i) (being convicted of committing an act constituting a crime under New York State Law).

SPECIFICATION OF MISCONDUCT

FIRST SPECIFICATION

CRIMINAL CONVICTION UNDER NEW YORK STATE LAW

Respondent is charged with professional misconduct within the meaning of New York Education Law § 6530(9)(a)(i) in that he was found guilty of committing acts constituting crimes under New York State law.

1. The facts of paragraphs 1, 2 and /or 3;

DATED: July 24, 1997

Albany, New York



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional

Medical Conduct

APPENDIX II

APPENDIX II  
TERMS OF PROBATION

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

3. Dr. Papiasvili shall submit prompt written notification to the Board addressed to the Director, office of Professional Medical conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Dr. Papiasvili leaves New York to reside or practice outside the State, Dr. Papiasvili shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of her departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

5. Dr. Papiasvili shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Papiasvili's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.

6. Dr. Papiasvili shall resume therapy with Robert J. Berk, Ph.D., or another psychotherapist acceptable to the Director of the Office of Professional Medical Conduct, as long as said therapist determines is necessary, or for the time period dictated in the Order. Dr. Papiasvili shall cause the therapist to submit a proposed treatment plan and quarterly reports to the Office of Professional Medical Conduct certifying whether Dr. Papiasvili is in compliance with the treatment plan. Dr. Papiasvili shall cause the therapist to report

to the Office of Professional Medical Conduct within 24 hours if Dr. Papiasvili leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.

7. Dr. Papiasvili shall have quarterly meetings with a monitoring physician who shall review Dr. Papiasvili's practice. This monitoring physician shall review randomly selected medical records and evaluate whether Dr. Papiasvili's practice comports with generally accepted standards of medical practice and whether his billing practices comport with acceptable standards. This monitoring physician shall be selected by Dr. Papiasvili and is subject to the approval of the Director of the Office of Professional Medical Conduct. Dr. Papiasvili shall not practice medicine until an acceptable monitoring physician is approved by the Director. Dr. Papiasvili shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.

8. Dr. Papiasvili shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of the Office of Professional Medical Conduct prior to Dr. Papiasvili's practice after the effective date of this Order.

9. Dr. Papiasvili shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.

10. Dr. Papiasvili shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Papiasvili elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

11. If there is full compliance with every term

set forth herein, Dr. Papiasvili may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon 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 Dr. Papiasvili pursuant to New York Public Health Law §230(19) or any other applicable laws.