



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

August 11, 1994

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NEW YORK

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bhupendra Patel, M.D.
95 Georgia Street
Clark, New Jersey 07066

Ralph J. Bavaro, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Solomon Kaplan, Esq.
2111 White Plains Road
Bronx, New York 10462

Not Appealed
Effective Date: 8/18/94

RE: In the Matter of Bhupendra Patel, M.D.

Dear Dr. Patel, Mr. Kaplan and Mr. Bavaro:

Enclosed please find the Determination and Order (No. 94-143) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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), "(t)he 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, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
BHUPENDRA PATEL, M.D.**

**DETERMINATION
AND
ORDER**

NO. BPMC-94-143

A Notice of Hearing and Statement of Charges, both dated March 9, 1994, were served upon the Respondent, **BHUPENDRA PATEL, M.D. ROBERT BRUCE BERGMANN, M.D.**, (Chair), **ANDREW CONTI, 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. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on April 27, 1994. The Department of Health appeared by **RALPH BAVARO, Esq.**, Associate Counsel. The Respondent appeared by, **SOLOMON KAPLAN, 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 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 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 State. 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 Section 6530 (9) (a) (i). 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 October 31, 1983 by the issuance of license number 156519 by the New York State Education Department. (Pet. Ex. #2)

2. On June 7, 1990, Respondent was convicted in the Supreme Court of the State of New York, County of Bronx of Grand Larceny in the Third Degree, in violation of former Section 155.35 of the New York Penal Law. (Pet. Ex. 3 and 4)

3. The indictment on which the conviction was based stated that Respondent, submitted Medicaid claims which he knew contained false representations that psychiatric treatment had been rendered to Medicaid recipients by him as a specialist in psychiatry. (Pet. Ex. 4)

4. On September 7, 1990, The Respondent was sentenced to five years probation and ordered to pay restitution in the amount of \$123,500. (Pet. Ex. 3)

5. By Order dated July 22, 1992, the New Jersey State Board of Medical Examiners, pursuant to the aforementioned New York criminal conviction ordered that

Respondent's license to practice medicine in New Jersey be suspended for three years. The suspension however, was stayed, upon the condition that Respondent satisfactorily complete a comprehensive course acceptable to the Board in general psychiatric assessment and treatment and use of psychotherapeutic agents. Upon completion of the aforesaid course and a pending appearance before the Preliminary Evaluation Committee, it was further ordered that "Respondent shall not prescribe, distribute, or provide for use any psychotherapeutic agents, nor shall respondent bill for any psychotherapy or psychiatric services. Further, respondent shall refer patients who are in need of psychiatric or psychotherapeutic treatment to a licensed mental health professional." (Pet. Ex. 8)

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 plead guilty to Grand Larceny in the Third Degree in violation of the New York Penal Code. He was sentenced to five year's probation and ordered to make restitution in the amount of \$123,500. Section 6530 (9) (a) (i) of the Education Law defines professional misconduct as "being convicted of committing an act constituting a crime under New York state law." As a result, the Hearing Committee voted to sustain the First Specification 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 effective immediately until July 22, 1995. The suspension shall be stayed in its entirety and Respondent placed on probation. The term of the suspension coincides with the term of suspension imposed by the New Jersey State Board of Medical Examiners. 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.

At the hearing Respondent testified that he is not registered in and has not practiced medicine in New York State since 1990. (T. 12) He further testified that he has been excluded from Medicare and Medicaid participation until 1998. (T. 20) Respondent also argued that he has sufficiently paid for his crime in that he is making restitution to Medicaid for the assessed overcharges, he has closed his practice in New York and is complying with the probationary terms set forth by the New Jersey State Board of Medical Examiners.

Notwithstanding the above, Respondent plead guilty to a crime involving fraud against Medicaid. The Hearing Committee believes that crimes against the Medicaid system have a serious impact upon the health care system in the State of New York. However, the Hearing Committee has considered several factors which they believe mitigate against a severe penalty in this instance. These include Respondent's criminal conviction which required him to make a significant monetary restitution and to be placed on probation for 5 years. This conviction also resulted in Respondent's ban from participation as a providing physician in the Medicaid/Medicare program for 8 years. In addition, Respondent's license has already been

suspended by the New Jersey State Board of Medical Examiners, but stayed upon specific probationary conditions. These include a prohibition on providing psychotherapy or psychiatric services to any patients or prescribing psychotherapeutic agents to any patients until Respondent satisfactorily completes a comprehensive course of training in this area. As Respondent is not presently practicing or registered to practice in the State of New York, the Hearing Committee feels that there is no practical purpose to impose any further sanctions beyond what has already been required by the New Jersey State Board. However, the Hearing Committee is obliged to protect the public interest from fraud against Medicaid and to deter Respondent and other physicians from future acts of professional misconduct of this nature. Under the totality of the circumstances a stayed suspension and probation are the appropriate sanctions in this instance.

ORDER

Based upon 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**;
2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** until July 22, 1995. The term of the suspension shall be stayed, and Respondent shall be placed on probation in accordance with the terms of probation contained in Appendix II which is attached to this Determination and Order and incorporated herein.

Dated: Albany, New York
August 6, 1994



ROBERT BRUCE BERGMANN, M.D.
(Chair)
ANDREW CONTI, M.D.
EUGENIA HERBST

TO: Ralph Bavaro, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza - 6th Floor
New York, NY 10001

Solomon Kaplan, Esq.
2111 White Plains Rd.
Bronx, NY 10462

Bhupendra Patel, M.D.
95 Georgia Street
Clark, NJ 07066

APPENDIX I

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

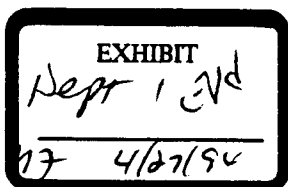
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: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: BHUPENDRA PATEL, M.D. : PROCEEDING
:-----X

TO: BHUPENDRA PATEL, M.D.
95 Georgia Street
Clark, NJ 07066

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 27th day of April, 1994 at 11:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th 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, 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 April 17, 1994 .

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 April 17, 1994 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 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
March 9, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Ralph J. Bavaro
Associate Counsel
(212) 613-2601

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

-----X
IN THE MATTER : STATEMENT
OF : OF
BHUPENDRA PATEL, M.D. : CHARGES
-----X

BHUPENDRA PATEL, M.D., the Respondent, was authorized to practice medicine in New York State on October 31, 1983 by the issuance of license number 156519 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

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FACTUAL ALLEGATIONS

- A. On or about June 7, 1990 in Supreme Court, County of Bronx, New York, Respondent was convicted of grand larceny in the third degree in violation of former section 155.35 of the New York Penal Law, for fraudulent medicaid billing. Respondent was sentenced to five years probation and ordered to pay restitution in the amount of \$123,500

SPECIFICATION OF CHARGES

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(i)(McKinney Supp. 1994) in that he has been convicted of a crime under New York State law. Petitioner charges the facts contained in paragraph A.

DATED: New York, New York

March 9, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct

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

_____ X
:
:
THE MATTER OF SERVICE : AFFIDAVIT OF SERVICE
:
Bhupendra Patel, M.D. :
:
_____ X

STATE OF NEW YORK) SS:
COUNTY OF NEW YORK)

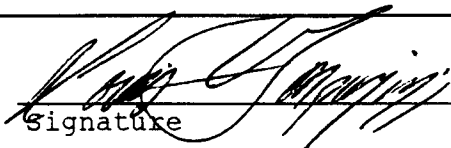
Louis Gasparini, being duly sworn, states:

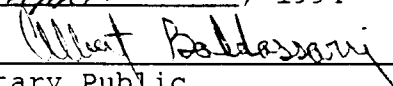
1. I am over eighteen years of age and am not a party to the above captioned proceeding.

2. I am employed by the New York State Department of Health's Office of Professional Medical Conduct as a Supervising Medical Conduct Investigator.

3. I served the annexed Notice of Referral Proceeding and exhibits upon Bhupendra Patel, M.D. by going to 71 Fourth Avenue, East Orange, N.J. on April 5, 1994, at approximately 5:35 am/pm and handing said person a true copy thereof.

4. A description of the person so served is as follows:
Approx. Age: 45; Approx. Wt.: 135 lbs.; Approx. Ht.: 5'6";
Sex: male; Skin Color: brown; Hair Color: black;
Other identifying characteristics: eyeglasses


Signature

Sworn to before me on this
12th day of
April, 1994

Notary Public

ALBERT BALDASSARRI
Notary Public, State of New York
No. 31-4977958
Qualified in New York County
Commission Expires 2-11-95

APPENDIX II

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APPENDIX II
TERMS OF PROBATION

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

3. Dr. Patel 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. Patel returns to New York to reside or practice within the State, Dr. Patel 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 date of his return.

5. Dr. Patel shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation including those set forth by the New Jersey State Board of Medical Examiners 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.

6. The terms of probation ordered by the New Jersey State Board of Medical Examiners on July 22, 1992 are:

(1) The Respondent's license to practice medicine and surgery in the State of New Jersey shall be and is hereby suspended for a period of three years, effective immediately, which suspension shall be stayed in its entirety.

(2) Respondent within the next twelve months shall attend and satisfactorily complete a comprehensive course acceptable to the Board in the subject of basic, general psychiatric assessment and treatment and use of psychotherapeutic agents.

(3) Until such time as the requirement of paragraph 2 has been met and pending an appearance before the Preliminary Evaluation Committee, respondent shall not prescribe, distribute, or provide for use any psychotherapeutic agents, nor shall respondent bill for any psychotherapy or psychiatric services. Further, respondent shall refer patients who are in need of psychiatric or psychotherapeutic treatment to a licensed mental health professional.

7. If there is full compliance with every term set forth herein, Dr. Patel 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. Patel pursuant to New York Public Health Law Section 230(19) or any other applicable laws.