



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

January 27, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Valerie B. Donovan, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Alexis Benjamin, R.P.A.
34 Meadowbrook Road
Hempstead, New York 11550

RE: In the Matter of Alexis Benjamin, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-22) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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/nm". The signature is written in a cursive style with a large initial 'T' and 'B'. The letters 'nm' are written in a smaller, simpler font at the end of the signature.

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-

ALEXIS BENJAMIN, R.P.A.

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE

BPMC ORDER
NO. 99-22

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated September 20, 1998. The Notice of Hearing and Statement of Charges were served upon **ALEXIS BENJAMIN, R.P.A.**, (hereinafter referred to as "Respondent"). A hearing was held on November 24, 1998 at Hedley Park Place, Troy, New York.

A Hearing Committee was constituted pursuant to Section 230(10)(e) of the Public Health Law. The members of this Committee were **ROGER M. OSKVIK, M.D.**, Chairperson, **PATRICK A. FANTAUZZI, M.D.**, and **PROF. GEORGE SIMMONS, Ed. D.** Each member of the Committee was a duly designated member of the State Board for Professional Medical Conduct.

JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as the Administrative Officer in this matter.

The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner" or "the Board") appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **VALERIE B. DONOVAN, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct.

Respondent did not appear in person or by counsel.. Jurisdiction was established. Respondent was found to be in default. Evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530 (9)of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9) (a) (ii) (having been convicted of a crime under federal law). The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

SIGNIFICANT LEGAL DECISIONS

The Board established jurisdiction over Respondent. The Administrative Law Judge found Respondent to be in default.

FINDINGS OF FACT

The Committee adopts the factual statements set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS SPECIFICATIONS AND PENALTY

Petitioner herein has proven by a preponderance of the evidence that Respondent was appropriately served with notice of this proceeding. Respondent had personally communicated with counsel for the state. The communication indicated that Respondent had actual knowledge of this proceeding. Therefore, the Administrative Law Judge ruled that Petitioner had established jurisdiction and hence Respondent was in default.

Petitioner has proven by a preponderance of the evidence that Respondent pled guilty to the federal crimes of Conspiracy to Commit Mail Fraud (18 U.S.C. §371) and Mail Fraud (18 U.S.C. §1341). Respondent was sentenced to three years probation with other terms and conditions.

Therefore, Petitioner has proven the factual allegations and specification in this matter. The Committee now turns their attention to penalty. The factual allegations proven constitute serious crimes that directly address the practice of medicine. Respondent billed the Medicaid program for tests that were not necessary. He also billed the Medicaid program for prescriptions that were unnecessary. Respondent admitted he intentionally perpetrated fraud against the federal government for personal gain.

By his plea, Respondent admitted to violations of the trust bestowed upon physicians in this state solely as a result of the license to practice medicine. The federal government, the state, government, patients and the public at large have a right to expect physicians to honestly and appropriately file claims for service. Moreover, patients have a right to expect that prescriptions and procedures will be ordered on the basis of patient well being rather than the personal pecuniary gain of the physician. The failure to follow these basic ethical rules constitute an egregious violation of the standards of the profession.

Respondent has presented no mitigation or any basis upon which the Committee can find a likelihood of rehabilitation. Respondent, by his unexplained absence at this proceeding, has shown contempt for the Board, contempt for the Commissioner and contempt for his license. On the basis of all the above, the only appropriate remedy is revocation.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the state of New York is hereby **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

4. This order shall take effect **UPON RECEIPT** by Respondent or her attorney or **SEVEN (7) DAYS** after mailing of this order by Certified Mail to Respondent or her attorney.

Dated:
Pittsford, New York

January 15, 1998



ROGER M. OSKVIG, M.D., Chairperson

PATRICK A. FANTAUZZI, M.D.,
PROF. GEORGE SIMMONS, Ed. D

TO:

VALERIE B. DONOVAN ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
Division of Legal Affairs
Corning Tower, Room 2509
Empire State Plaza
Albany, N.Y. 12237

ALEXIS BENJAMIN, R.P.A..
34 Meadowbrook Road
Hempstead, NY 11550

APPENDIX ONE

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

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IN THE MATTER : STATEMENT
OF : OF
ALEXIS BENJAMIN, R.P.A. : CHARGES

-----X

ALEXIS BENJAMIN, R.P.A, the Respondent, was authorized to practice as a registered physician assistant in New York State on December 3, 1987, by the issuance of license number 003420 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department, with an present address of 34 Meadowbrook Road, Hempstead, New York 11550.

FACTUAL ALLEGATIONS

- A. On December 12, 1997, in United States District Court for the Southern District of New York, judgment was entered after Respondent pled guilty to Conspiracy to Commit Mail Fraud (18 U.S.C. § 371) and Mail Fraud (18 U.S.C. § 1341), both felonies. Specifically, in Count One, Respondent pled that from in or about October 1990 through May 1991, he willfully and knowingly conspired to commit mail fraud by participating in a scheme to operate medical clinics for the purpose of obtaining payments from the Medicaid System by submitting and causing others to submit bills to Medicaid for medical services, drug prescriptions and laboratory tests which they knew to be medically unnecessary. In Count

Two, Respondent pled that from in or about October 1990 through May 1991, he willfully and knowingly participated in a scheme to obtain money and property by fraudulent means by writing drug prescriptions and ordering medical tests that he knew to be medically unnecessary, for the purpose of obtaining payments from the Medicaid system. Respondent utilized the United States Postal Service to deliver orders for laboratory tests to a New Jersey laboratory. Respondent received a sentence of three years probation in addition to other terms and conditions.

SPECIFICATION OF MISCONDUCT

CRIMINAL CONVICTION

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

1. Paragraph A.

DATED: *September 30*, 1998
Albany, New York


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