



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

October 16, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Nathan H. Mitchell, Esq.
299 Broadway
New York, New York 10007

Guy Surpris, M.D.
186-04 121st Avenue
St. Albans, New York 11412

RE: In the Matter of Guy Surpris, M.D.

Dear Ms. Kaplan, Mr. Mitchell and Dr. Surpris:

Enclosed please find the Determination and Order (No. BPMC 92-84) of the Hearing Committee 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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 than 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 (p), 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.

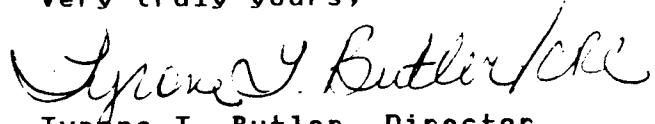
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Moran, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower - Room 2503
Empire State Plaza
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. Moran 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.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
GUY SURPRIS, M.D. : ORDER
-----X

ORDER NO. BPMC-92-84

A Notice of Hearing and Statement of Charges, both dated June 23, 1992, were served upon the Respondent, GUY SURPRIS, M.D. **JANE C. McCONNELL (Chair), ROBERT J. O'CONNOR M.D., and DANIEL A. SHERBER, 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, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. A hearing was held on August 18, 1992. The Department of Health appeared by Marcia E. Kaplan, Esq., Associate Counsel. The Respondent appeared by Nathan H. Mitchell, 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. 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)(1). 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. Guy Surpris, M.D., hereinafter Respondent, was authorized to practice medicine in New York State on November 3, 1982 by the issuance of license number 152432 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992. (Pet. Ex. #2).

2. On or about January 6, 1992, Respondent was convicted after a plea of guilty in the Supreme Court of the State of New York, County of New York, of Grand Larceny in the Third Degree, a felony, in violation of Penal Law Section 155.35, in that from on or about February 1, 1988 to on or about September 12, 1988, Respondent stole from New York State and its fiscal agent, Computer Sciences Corporation. Respondent submitted magnetic tapes constituting Medicaid claims which falsely represented that Respondent had rendered psychiatric treatment to Medicaid patients, in reliance upon which he was paid approximately \$39,320. (Pet. Ex. #3-A, 3-B and 3-C).

3. On or about April 9, 1992, Respondent was sentenced to five years probation, conditioned upon restitution of \$31,500 with \$1,575 designated surcharge. (Pet. Ex. #3-A, 3-D).

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 met its burden of proof. The preponderance of the evidence demonstrates that on January 6, 1992 Respondent pleaded guilty to Grand Larceny in the Third Degree, (a felony) in violation of Penal Law Section 155.35. The Hearing Committee further concluded that Respondent committed professional misconduct within the meaning of

Education Law Section 6530(9)(a)(i), by virtue of this criminal conviction. As a result, the Hearing Committee sustained the specification of 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 medical license and registration 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 was convicted of stealing approximately \$39,320 from the Medicaid program. His conviction was obtained via a plea of guilt entered in open court, during which Respondent freely admitted his unlawful conduct. (Pet. Ex. #3-C). Nevertheless, Respondent attempted to repudiate his guilty plea during his disciplinary hearing. Respondent claimed that the false billings were mere clerical errors and that he lied to the judge at his plea hearing in order to "end the destruction, socially, economic of himself." T. p. 20). When asked to explain why the Hearing Committee should believe Respondent after admitting to perjury before a Supreme Court Judge, he gave a rambling, almost incoherent response. (T. pp. 27-30).

Respondent's lack of remorse, combined with his attempt to repudiate his guilty plea, demonstrated to the Hearing Committee that revocation was the only appropriate sanction. It was clear to the members of the Committee that Respondent lacked the moral integrity expected of a member of the medical profession. A mere period of suspension, with or without probation, would not provide Respondent with the integrity which he lacks.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and
2. Respondent's license and registration to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
Jst 15 , 1992



JANE C. McCONNELL (Chair)

Robert J. O'Connor, M.D.
Daniel A. Sherber, M.D.

TO: Marcia E. Kaplan, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Nathan H. Mitchell, Esq.
299 Broadway
New York, New York 10007

Guy Surpris, M.D.
186-04 121st Avenue
St. Albans, New York 11412

APPENDIX I

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

OPHC Surpris
8/18/92
874319

-----X
: IN THE MATTER :
: OF :
: GUY SURPRIS, M.D. :
-----X

NOTICE OF
REFERRAL
PROCEEDING

TO: GUY SURPRIS, M.D.
186-04 121st Avenue
St. Albans, N.Y. 11412

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. 1992) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 18th day of August, 1992 at 2:15 o'clock in the afternoon 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 Larry Storch, Administrative Law Judge, New York State Department of Health, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, as well as the Department of Health attorney indicated below, on or before August 7, 1992 .

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with Judge Storch at the address indicated above on or before August 7, 1992 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

YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT
YOU IN THIS MATTER.

DATED: New York, New York

June 23, 1992



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
212 613-2615

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

-----X

IN THE MATTER : STATEMENT
OF : OF
GUY SURPRIS, M.D. : CHARGES

-----X

GUY SURPRIS, M.D., the Respondent, was authorized to practice medicine in New York State on November 3, 1982 by the issuance of license number 152432 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992.

FIRST SPECIFICATION

**HAVING BEEN CONVICTED OF
AN ACT CONSTITUTING A CRIME
UNDER NEW YORK STATE LAW**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(a)(i) (McKinney Supp.

1992) in that he has been convicted of committing an act constituting a crime under New York State law, specifically:

On or about January 6, 1992, the Respondent was convicted after a plea of guilty in the Supreme Court of the State of New York, County of New York, of Grand Larceny in the Third Degree, a felony, in violation of Section 155.35 of the Penal Law, in that from on or about February 1, 1988 to on or about September 12, 1988, the Respondent stole from New York State and its fiscal agent, Computer Sciences Corporation, by submitting magnetic tapes constituting Medicaid claims which represented falsely that he had rendered psychiatric treatment to Medicaid patients in the nature of consultations on behalf of other physicians, in reliance upon which he was paid inappropriately approximately \$39,320.

On or about April 9, 1992, the Respondent was sentenced to five years probation, conditioned upon restitution of \$31,500 with \$1,575 designated surcharge. The Probation Department shall determine when the Respondent is able to make restitution and then return to Court to set up a payment schedule. Six months prior to termination of probation, the Respondent is to execute a Confession of Judgment for the balance owed to New York State.

DATED: NEW YORK, NEW YORK

June 23, 1992



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct