



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 16, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Jerome Verdell, M.D.
346 St. Marks Avenue
Freeport, New York 11520

RE: In the Matter of Jerome Verdell, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 97-224) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

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 :
OF :
JEROME VERDELL, M.D. :
-----X

DETERMINATION
AND
ORDER

BPMC-97-224

A Notice of Referral Proceeding and Statement of Charges, both dated July 28, 1997, were served upon the Respondent, Jerome Verdell, 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 Denise Lepicier, Esq., Associate Counsel. The Respondent failed to appear in person, did not file an answer to the charges and was not represented by counsel. 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)(c) [having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation] and §6530(9)(a)(ii) [having been convicted of committing an act constituting a crime under federal 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. Jerome Verdell, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on or about 1987 by the issuance of license number 172769 by the New York State Education Department. (Pet. Ex. #1).

2. On or about October 8, 1993, Respondent was found, after a hearing before the New York State Department of Social Services (hereinafter "DSS"), to have committed unacceptable practices in his participation in the New York State Medicaid Program. No appeal is pending from this decision. Among other things, Respondent was found to have engaged in conduct which is contrary to the official rules and regulations of DSS and the State Education Department relating to standards for medical care and services. DSS found that Respondent, in the course of treatment of twenty-five patients:

-- submitted or caused to be submitted false claims, namely claims for unfurnished and/or unnecessary care or services in violation of 18 NYCRR §515.2(b)(1)(i)(a) and (c);

-- failed to maintain records necessary to fully disclose the medical necessity for and the nature and extent of the medical care, services or supplies furnished or to comply with other requirements of 18 NYCRR §515.2(b)(6); and

-- failed to meet professionally recognized standards for health care in violation of 18 NYCRR §515.2(b)(12). (Pet. Ex. #3).

3. DSS excluded Respondent from participation in the Medicaid Program for at least two years, based upon the findings of the adjudicatory proceeding. (Pet. Ex. #3).

4. On or about January 17, 1997, Respondent was convicted in the United States District Court for the Eastern District of New York, after entering a plea of guilty, on three counts of failing to file a tax return for the years 1989, 1990 and 1991, in violation of Title 26, United States Code §7203. Respondent was sentenced to three years probation with the first eight months to be served on home detention with electronic monitoring. Respondent was further ordered to pay all the costs of the electronic monitoring, to pay all taxes due, to make full disclosure of his finances to the Probation Department, and to cooperate with the Internal Revenue Service with respect to payment of the taxes owed. (Pet. Ex. #4).

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 in this matter. The preponderance of the evidence demonstrates that following an adjudicatory hearing, Respondent was found guilty of violating New York statutes and regulations governing the Medicaid program. Moreover, by failing to file an answer to the charges, Respondent is deemed to have admitted that the conduct on which this finding was based would constitute professional misconduct under Education Law §6530(3) [negligence on more than one occasion], (5) [incompetence on more than one occasion], (16) [willful or

grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of medicine] and(35) [ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient]. (See, Public Health Law §230(10)(c)). Accordingly, the Hearing Committee voted to sustain the First Specification.

The record also clearly established that Respondent was convicted of three misdemeanor counts of failing to file Federal income tax returns for the years 1989, 1990 and 1991. These acts constitute crimes under federal law. Therefore, Respondent is guilty of professional misconduct in violation of Education Law §6530(9)(a)(ii), and the Second Specification must also be sustained.

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 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 found guilty, in the DSS of proceedings, of filing false claims for Medicaid reimbursement, failure to maintain adequate records, and the failure to meet minimal

standards of medical practice with regard to twenty-five patients. Respondent was also found guilty of failing to file federal income tax returns for a three year period. Any of these violations, considered alone, would warrant revocation. Viewed together, a compelling case for revocation is presented.

Respondent has demonstrated moral unfitness to practice the profession by virtue of his criminal conviction and submission of false claims to the Medicaid program. Moreover, Respondent has demonstrated repeated negligence and incompetence in his medical practice. Respondent failed to appear at this hearing to testify or present any evidence which might mitigate the sanction to be imposed. Under the totality of these circumstances, only revocation will adequately protect the public.

ORDER

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

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**;

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 15, 1997


STEPHEN A. GETTINGER, M.D. (CHAIR)

DAVID SIBULKIN, M.D.
EUGENIA HERBST

(112)

TO: Denise Lepicier, Esq.
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Jerome Verdell, M.D.
346 St. Marks Avenue
Freeport, New York 11520

APPENDIX I

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

IN THE MATTER
OF
JEROME VERDELL, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: JEROME VERDELL, M.D.
346 St. Marks Avenue
Freeport, N.Y. 11520

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1997) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1997). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on September 9, 1997, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

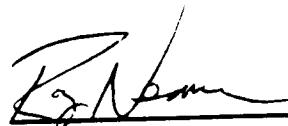
Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1997) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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: New York, New York
July, 27 1997



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Denisé Lepicier
Attorney
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(914) 763-5717

IN THE MATTER
OF
JEROME VERDELL, M.D.

STATEMENT
OF
CHARGES

JEROME VERDELL, M.D., the Respondent, was authorized to practice medicine in New York State on or about 1987, by the issuance of license number 172769 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about October 8, 1993, Respondent was found, after a hearing before the New York State Department of Social Services, to have committed unacceptable practices in his participation in the New York State Medical Assistance for Needy Persons Program. No appeal is pending from this decision. Among other things, Respondent was found to have engaged in conduct which is contrary to "the official rules and regulations of the Education Department relating to standards for medical care and services" in the treatment of twenty-five patients in that Respondent:
1. "Submitt[ed] or caus[ed] to be submitt[ed] false claims, namely claims for unfurnished and/or unnecessary care or services" (18 NYCRR 515.2 [b][1][i][a] and [c]);
 2. "Fail[ed] to maintain records necessary to fully disclose the medical necessity for and the nature and extent of the medical care, services or supplies furnished or to comply with other requirements of Title 18 of NYCRR" (18 NYCRR 515.2 [b][6]);

3. "Failed to meet professionally recognized standards for health care" (18 NYCRR 515.2 [b][12]).

B. On or about January 17, 1997, Respondent was convicted in the United States District Court for the Eastern District of New York, after entering a plea of guilty, of three counts of failing to file a tax return for the years 1989, 1990 and 1991, in violation of Title 26, United States Code Section 7203. Respondent was sentenced to three years probation with the first eight months to be served on home detention with electronic monitoring. Respondent was further ordered to pay all the costs of the electronic monitoring, to pay all taxes due, to make full disclosure of his finances to the Probation Department, to cooperate with the Internal Revenue Service with respect to payment of the taxes owed, and not to possess a firearm,

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF VIOLATING A STATE OR FEDERAL STATUTE OR REGULATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(c)(McKinney Supp. 1997) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, where no appeal is pending and where the conduct upon which the finding was based would constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530, Subsections [3][negligence on more than one occasion], [5][incompetence on more than one occasion], [16][wilful or grossly negligent failure

to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine], and [35][ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient]) as alleged in the facts of the following:

1. Paragraphs A and A1 through A3.

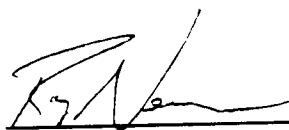
SECOND SPECIFICATION

FEDERAL CRIMINAL CONVICTION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1997) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

2. Paragraph B.

DATED: July 28, 1997
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct