



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Karen Schimke  
*Executive Deputy Commissioner*

April 18, 1996

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph Huberty, Esq.  
New York State Department of Health  
Corning Tower - Room 2438  
Empire State Plaza  
Albany, New York 12237

Joseph David Waxberg, M.D.  
65 Prospect Street  
Stanford, Connecticut 06901

Joseph David Waxberg, M.D.  
81 Skyview Lane  
New Canaan, Connecticut 06840

Effective Date: 04/25/96

RE: In the Matter of Joseph David Waxberg, M.D.

Dear Mr. Huberty and Dr. Waxberg :

Enclosed please find the Determination and Order (No. BPMC-96-85) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "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 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.

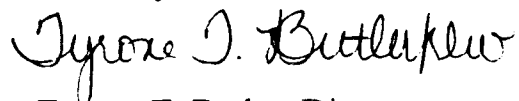
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "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

**COPY**

IN THE MATTER  
OF  
JOSEPH DAVID WAXBERG, M.D.

DETERMINATION  
AND  
ORDER

BPMC-96-85

A Notice of Hearing and Statement of Charges, both dated January 26, 1996, were served upon the Respondent, **JOSEPH DAVID WAXBERG, M.D.** **TERESA S. BRIGGS, M.D.** (Chair), **RICHARD F. KASULKE, M.D.** and **REV. EDWARD J. HAYES**, 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 March 6, 1996. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **JOSEPH HUBERTY, ESQ.**, Assistant Counsel. The Respondent did not appear and was not represented by counsel. 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 5430(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 Sections 6530(9)(b) and 6530(9)(d). 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 parenthesis 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 December 20, 1949 by the issuance of license number 049664 by the New York State Education Department. Respondent is not presently registered to practice medicine in New York State. (Pet.Ex. #3)

2. On or about April 6, 1993 the Connecticut State Department of Health Services served on Respondent a Notice of Hearing with a Statement of Charges attached thereto charging Respondent, among other things, with having violated Connecticut General Statutes Sec. 20-13c(4) in that:
  - (a) Respondent submitted bills (charges for professional services rendered) to an insurance company for professional services rendered a person who was actually not Respondent's patient; and
  - (b) Respondent made and submitted a psychiatric diagnosis to an insurance carrier for a person who was not his patient and whom he had not treated. (Pet.Ex. # 2)
  
3. By order dated May 16, 1995 the Connecticut State Medical Examining Board (hereinafter Connecticut Board) found Respondent guilty of illegal, incompetent or negligent conduct in the practice of medicine (a violation of Conn. Gen. Statutes Sec. 20-13(4)) in that during the period from on or about August 1988 to on or about July 1989 Respondent submitted bills (charges for professional services rendered) and a psychiatric diagnosis to an insurance carrier for a person who was not his patient and whom Respondent had not treated. (Pet.Ex. # 2)
  
4. By order dated May 16, 1995 the Connecticut Board disciplined Respondent as follows:
  - (a) The Connecticut Board censured Respondent; and
  - (b) Respondent was ordered to pay a civil penalty in the sum of One Thousand Dollars (\$1,000.00). (Pet.Ex. # 2)

## **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 was censured and fined by the Connecticut State Department of Health Services for filing a false report with an insurance company, and for fraudulent billing of an insurance company. Section 6530(9)(b) of the Education Law defines professional misconduct as "having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State. Section 6530(9)(d) of the Education Law defines professional misconduct in part as having his or her license to practice medicine revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State. As a result, the Hearing Committee voted to sustain the First and Second Specifications 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, determined by a vote of 2 to 1 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 did not appear at the hearing and no mitigation was presented on his behalf. The Hearing Committee unanimously agreed that the penalty imposed by the State of Connecticut was too lenient. Although Respondent's advanced age was noted by the Hearing Committee, the majority believes that a message to physicians must be sent that the fraudulent practice of medicine has no place in New York State. Therefore, a majority of the Hearing Committee deemed revocation as the appropriate sanction under the circumstances.

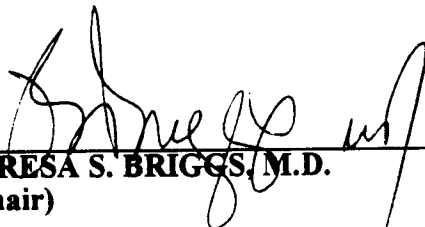


**ORDER**

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 **REVOKED**.
3. This Order shall be effective upon service on the Respondent or the Respondent's attorney by certified or registered mail.

**DATED: Albany, New York**  
April 15 1996

  
\_\_\_\_\_  
**TERESA S. BRIGGS, M.D.**  
(Chair)

**RICHARD F. KASULKE, M.D.**  
**REV. EDWARD J. HAYES**

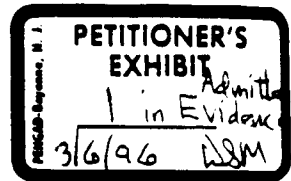
(110)

**TO:** Joseph Huberty, Esq.  
Assistant Counsel  
NYS Department of Health  
Corning Tower-Room 2438  
Empire State Plaza  
Albany, New York 12237

Joseph David Waxberg, M.D.  
65 Prospect Street  
Stanford, Connecticut 06901

Joseph David Waxberg, M.D.  
81 Skyview Lane  
New Canaan, Connecticut 06840

**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  
JOSEPH DAVID WAXBERG, M.D. : PROCEEDING

-----x

TO: JOSEPH DAVID WAXBERG, M.D.  
65 Prospect Street  
Stanford, Connecticut 06901  
  
81 Skyview Lane  
New Canaan, Connecticut 06840

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. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 6th day of March, 1996 at 10:00 in the forenoon of that day at the Cultural Education Building, Empire State Plaza, Concourse Level, Meeting Room E, Albany, New York 12230.

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

PET. EX. I

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 February 27, 1996.

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 February 27, 1996 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  
January 26, 1996



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

Inquiries should be addressed to:

JOSEPH HUBERTY  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2429  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
JOSEPH DAVID WAXBERG, M.D. : CHARGES  
-----X

JOSEPH DAVID WAXBERG, M.D., the Respondent, was authorized to practice medicine in the State of New York on December 20, 1949 by the issuance of License No. 049664 by the New York State Education Department. Respondent is not presently registered to practice medicine in the State of New York. Respondent's address, as shown on Respondent's last registration with the New York State Education Department, is 65 Prospect Street, Stamford, Connecticut 06901.

FACTUAL ALLEGATIONS

A. On or about April 6, 1993 the Connecticut State Department of Health Services served on Respondent a Notice of Hearing with a Statement of Charges attached thereto charging Respondent, among other things, with having violated Connecticut General Statutes Sec. 20-13c(4) in that:

1. Respondent submitted bills (charges for professional services rendered) to an insurance company for professional services rendered a person who was



actually not Respondent's patient; and

2. Respondent made and submitted a psychiatric diagnosis to an insurance carrier for a person who was not his patient and whom he had not treated.

B. By order dated May 16, 1995 the Connecticut State Medical Examining Board (hereinafter Connecticut Board) found Respondent guilty of illegal, incompetent or negligent conduct in the practice of medicine (a violation of Conn. Gen. Statutes Sec. 20-13(4)) in that during the period from on or about August 1988 to on or about July 1989 Respondent submitted bills (charges for professional services rendered) and a psychiatric diagnosis to an insurance carrier for a person who was not his patient and whom Respondent had not treated.

C. By order dated May 16, 1995 the Connecticut Board disciplined Respondent as follows:

1. The Connecticut Board censured Respondent; and
2. Respondent was ordered to pay a civil penalty in the sum of One Thousand (\$1,000.00) Dollars.

D. The rendition of a billing (charge) to an insurance carrier for professional services rendered to a person who is not a patient, if committed in New York State, would constitute an act of fraud and would also constitute conduct in the practice of medicine which evidences moral unfitness to practice medicine in New York State, violations of N.Y. Educ. Law Sec. 6530(2) and (20) (McKinney Supp. 1995) respectively.

E. Respondent's wilful making and submission to an insurance carrier of a psychiatric diagnosis for a person who was not Respondent's patient and whom he had not treated, if committed in New York State, would constitute the wilful making and submission of a false report in violation of N.Y. Educ. Law Sec. 6530(21) (McKinney Supp. 1995).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF UNPROFESSIONAL  
CONDUCT BY ANOTHER STATE DISCIPLINARY AGENCY

Petitioner charges Respondent with professional misconduct pursuant to N.Y. Educ. Law 6530(9)(b) (McKinney Supp. 1995) in that Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State in that Petitioner charges:


1. The facts in paragraphs A, A.1, A.2, B, C, C.1, C.2, D and/or E.

SECOND SPECIFICATION  
HAVING DISCIPLINARY ACTION TAKEN BY  
ANOTHER STATE DISCIPLINARY AGENCY

Petitioner charges Respondent with professional misconduct pursuant to the provisions N.Y. Educ. Law Sec. 6530(9)(d) (McKinney Supp. 1995) in that Respondent had his license to practice medicine revoked, suspended or had other disciplinary action taken against him by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State in that Petitioner charges:

2. The facts in paragraphs A, A.1, A.2, B, C, C.1, C.2, D and/or E.

Dated: Albany, New York  
January 26 1996

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