



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

October 11, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Richard Zahnleuter, Esq.  
NYS Department of Health  
ESP – Corning Tower – Room 2509  
Albany, New York 12237

Swapnadip Lahiri, M.D.  
52 Delford Avenue  
Oradell, New Jersey 07649

Barry Fallick, Esq.  
Rochman, Platzer, Fallick & Sternheim  
666 Third Avenue  
New York, New York 10017

SECRETARY OF STATE  
41 State Street  
Albany, New York 12207

**RE: In the Matter of Flatbush Medical Services, P.C.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-236) 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 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,



Tyfone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

**IN THE MATTER**  
**OF**  
**FLATBUSH MEDICAL SERVICES, P.C.**

**DETERMINATION**

**AND**

**ORDER**

BPMC #01-236

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated August 16, 2001, were served upon the Respondent, **FLATBUSH MEDICAL SERVICES, P.C.** **DONALD CHERR, M.D.**, Chairperson, **ERNEST A. KOPP, M.D.** and **MR. JOHN O. RAYMOND**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 28, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **RICHARD J. ZAHNLEUTER, ESQ.** and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent did not appear at the hearing.

Evidence was received 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i), based upon conviction of crimes under New York State Law. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

## WITNESSES

For the Petitioner: None

For the Respondent: None

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to 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. All Hearing Committee findings were unanimous unless otherwise specified.

1. **FLATBUSH MEDICAL SERVICES, P.C.**, the Respondent, was certified as a professional corporation to practice medicine in New York State pursuant to Section 1503 of the Business Corporation Law on or about August 13, 1997, by filing with the New York Department of State. The sole stockholder, director and officer of the P.C. is Swapnadip Lahiri, M.D. (Ex. 4).
2. On October 28, 1999, in the Supreme Court of the State of New York, County of Kings, Criminal Term, Part 11, based upon pleas of guilty authorized by Swapnadip Lahiri, M.D., Respondent was convicted of the felonies of Enterprise Corruption and Scheme to Defraud in the First Degree (Ex's 5-10).

## **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the commission of the crimes for which Respondent was convicted constituted misconduct under the laws of New York State, pursuant to New York Education Law §6530(a)(i);

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(I) by having been convicted of crimes under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

## **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that on October 28, 1999, in the Supreme Court of the State of New York, County of Kings, Criminal Term, Part 11, based upon pleas of guilty authorized by Swapnadip Lahiri, M.D., Respondent was convicted of the felonies of Enterprise Corruption and Scheme to Defraud in the First Degree (Ex's 5-10). The convictions dealt with Respondent's participation in an elaborate scheme to fraudulently obtain no-fault insurance payments for medical services and equipment from automobile insurance carriers.

The Hearing Committee determines that the commission of these serious felonies by this professional corporation, which was established to practice the profession of medicine pursuant to Section 1503 of the Business Corporation Law, warrants revocation of Respondent's Certificate of Incorporation. In this regard, it is noted that, pursuant to

Section 1503 of the Business Corporation Law, Professional Corporations are subject to the disciplinary proceedings and penalties, and their certificates of incorporation shall be subject to suspension, revocation or annulment for cause, in the same manner and to the same extent as is provided with respect to individuals and their licenses, certificates and registrations; and that the pre-hearing and hearing procedures provided with respect to individual physicians and their licenses under Title II-A of article two of the Public Health Law apply.

In addition to revocation of Respondent's Certificate of Incorporation, the Hearing Committee concludes that a fine of \$10,000 should be imposed for the one specification in the Statement of Charges upheld herein. The Department's contention that a fine of \$10,000 may be imposed for each of the two criminal convictions, even though the statement of charges contains only one specification, is rejected as contrary to the plain language of Public Health Law §230-a, which authorizes the imposition of "fine not to exceed ten thousand dollars upon each specification of charges of which the respondent is determined to be guilty".

It is noted that the Department achieved jurisdiction over Respondent by service of the Notice of hearing, Statement of Charges and hearing regulation summaries upon the Secretary of State, and upon Dr. Lahiri by certified and regular mail. There is no question that Dr. Lahiri received the Notice and related documents, as stated by his attorney in a phone conversation prior to the hearing with the Department's attorney. No one appeared on behalf of the Respondent at either the original hearing date, September 19, 2001, when the case could not be reached on the calendar, or the adjourned date (September 28, 2001), even though Respondent was duly notified of both dates, and no evidence in mitigation of the penalty to be imposed was presented on Respondent's behalf.



**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Certificate of Incorporation of Flatbush Medical Services, P.C., should be **REVOKED**.
2. A fine in the amount of Ten Thousand Dollars (\$10,000.00) is assessed against the Respondent. Payment of the fine shall be due within 60 days of the effective date of this Order.

The Respondent shall make payment to the Bureau of Accounts Management, new York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York, 12237.

Any fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest; late payment charges and collection fees; referral to the New York Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Rochester, New York  
5 October, 2001



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DONALD CHERR, M.D.  
Chairperson

ERNEST A. KOPP, M.D.  
MR. JOHN O. RAYMOND

# APPENDIX 1



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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 10, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before September 10, 2001, 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

*August 16*, 2001



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

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0828

or

Rick Zahnleuter  
Associate Counsel  
Corning Tower Building  
Room 2509  
Albany, NY 12237  
(518) 486-1841

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

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IN THE MATTER  
OF  
FLATBUSH MEDICAL SERVICES, P.C.  
FR-00-08-3850-B

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STATEMENT  
OF  
CHARGES

FLATBUSH MEDICAL SERVICES, P.C., Respondent, is a professional service corporation that was authorized to practice medicine in New York State on or about August 13, 1997, by the New York State Department of State.

**FACTUAL ALLEGATIONS**

A. Respondent is subject to the jurisdiction of the State Board for Professional Medical Conduct, and the pre-hearing and hearing procedures of Title II-A of Article 2 of the New York Public Health Law, pursuant to Section 1503(d) of the New York Business Corporation Law.

B. On or about August 13, 1997 through at least October 28, 1999, Swapnadip Lahiri, M.D., was the President and sole shareholder of Respondent.

C. On or about October 26, 1999, Swapnadip Lahiri, M.D., directed that pleas of guilty be entered on behalf of Respondent to the charges described in Paragraph D below.


D. On or about October 28, 1999, in the Supreme Court of the State of New York, County of Kings, Criminal Term, Part 11, based on the pleas of guilty described in Paragraph C above, Respondent was found guilty of the felonies of Enterprise Corruption and Scheme to Defraud in the First Degree.

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(i) by reason of having been found guilty of committing a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraphs A, B, C, and/or D.

DATED: *August 16*, 2001  
Albany, New York

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