



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

PUBLIC

July 1, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street - 4th Floor
Troy, New York 12180

Anthony Celentano, R.P.A.
60-34 Flushing Avenue
Maspeth, New York 11378

RE: In the Matter of Anthony Celentano, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-148) 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.

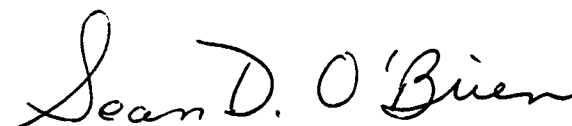
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:
Enclosure

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

COPY

IN THE MATTER
OF
ANTHONY CELENTANO, R.P.A.

DETERMINATION

AND

ORDER

BPMC #04-148

A hearing was held on June 16, 2004, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Hearing, dated April 14, 2004, and an Amended Statement of Charges, dated May 24, 2004, were served upon the Respondent, **Anthony Celentano, R.P.A.** Pursuant to Section 230(10)(e) of the Public Health Law, **Andrew J. Merritt, M.D.**, Chairperson, **James Egnatchik, M.D.**, and **Ms. Jean Krym**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Michael F. Mongelli II**, 41-07 162nd Street, Flushing, New York 11358, **Edward J. Pavia, Jr., Esq.**, of Counsel.

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), which establishes procedures for bringing charges of professional medical misconduct against a physician or a physician assistant and for conducting an administrative hearing to resolve such charges. In this case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(2), 6530(9)(a)(i), 6530(20), and 6530(21). Copies of the Commissioner's Order and Notice of Hearing and the Amended Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Sarah Garcia Francesca Flores Victor Vicente, M.D. Anthony Celentano, R.P.A.

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 of Fact were unanimous.

1. Anthony Celentano, R.P.A., the Respondent, was authorized to practice as a physician assistant in New York State on September 30, 1977, by the issuance of license number 000764 by the New York State Education Department (Petitioner Ex. 6[a]).

2. On March 22, 1988, in the Suffolk County Court, State of New York, the Respondent was convicted of Criminal Possession of Marijuana in the Fourth Degree, a

class A misdemeanor, and was sentenced to a one-year conditional discharge (Petitioner Ex. 7).

3. On or about December 7, 1990, the Respondent prepared and submitted to the New York State Department of Education, a Delayed Registration Application, wherein he falsely answered "No" to question 1.b., which asked, "Since you last registered have you been convicted of any crime (felony or misdemeanor) in any state or country or have you been charged with any crime the disposition of which was other than by acquittal or dismissal?" (Petitioner Ex. 6[b]).

4. On November 12, 2003, in the Supreme Court of the State of New York, County of Kings, the Respondent was found guilty, based on a plea of guilty, of Offering a False Instrument for Filing in the Fifth Degree, a class E felony. On January 12, 2004, the Respondent was sentenced to a three-year conditional discharge, the payment of \$60,000.00 in restitution, a \$200.00 surcharge and a \$10.00 victim's assistance fee. (Petitioner Exhibit 7).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(2) by practicing the profession fraudulently, in that [the Respondent answered question 1.b of the Delayed Registration Application falsely]."

VOTE: Not Sustained (2-1)

SECOND AND THIRD SPECIFICATIONS

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

FOURTH SPECIFICATION

"Respondent violated New York Education Law Section 6530(20) by conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that [the Respondent answered question 1.b of the Delayed Registration Application falsely]."

VOTE: Not Sustained (2-1)

FIFTH SPECIFICATION

"Respondent violated New York State Education Law Section 6530(21) by willfully making or filing a false report required by law by the department of health or by the education department, in that [the Respondent answered question 1.b of the Delayed Registration Application falsely]."

VOTE: Not Sustained (2-1)

HEARING COMMITTEE DETERMINATION

The charges against the Respondent are based on a 1988 conviction for marijuana possession, a failure in 1990 to disclose that conviction on a Delayed Registration Application, and a 2003 conviction for offering a false instrument for filing.

The First, Fourth and Fifth Specifications in the Statement of Charges are based on the failure to disclose the marijuana possession conviction on the application. The Respondent answered "No" to the question, "Since you last registered have you been convicted of any crime (felony or misdemeanor) in any state or country or have you been charged with any crime the disposition of which was other than by acquittal or dismissal?" The Petitioner contended that this false answer constituted practicing the profession fraudulently (First Specification), conduct in the practice of medicine which evidences moral unfitness (Fourth Specification), and willfully making or filing a false report (Fifth Specification).

The Respondent acknowledged in his testimony that his "No" answer was inaccurate, but testified that he had made an honest mistake. He testified that he had received a Certificate of Relief From Disabilities (Respondent Ex. E) and had believed at the time that he filled out the Delayed Registration Application that the Certificate allowed him to choose not to disclose the conviction. He testified that at that time he believed that the Certificate more or less negated the conviction and that, therefore, there was no requirement that he disclose the conviction. He stated that he now understands that a Certificate of Relief From Disabilities does not have such effect, but erroneously believed otherwise when he filled out the application.

The Hearing Committee, by a two to one vote, has judged the Respondent's testimony on this point to be credible. The majority of the Hearing Committee concludes that the Respondent misunderstood what the effect of the Certificate was and that he did not believe he was doing anything illegal or dishonest by answering "No." Therefore, there was no fraud because fraud does not exist when the false statement is the result of an honest mistake. Likewise, an honest mistake cannot be the basis for a finding of moral unfitness or a finding of willfully making or filing a false report. The First, Fourth and Fifth Specifications cannot be sustained.

The Second Specification concerns the marijuana possession conviction. The Respondent testified that despite the fact that he pled guilty to this charge, he was not guilty. He explained that he pled guilty because of the expense of a trial plus fear that he would be convicted of a more serious charge because he would be considered in the same light as his father, a co-defendant and a career criminal. This Hearing Committee was unconvinced by this explanation. The doctrine of collateral estoppel requires that the Respondent be prohibited from relitigating his guilt in this hearing. The courts have recognized that there are several exceptions to the collateral estoppel requirement, but

the Respondent presented no reason for concluding that any of the exceptions apply to this case. The Hearing Committee concludes that the Respondent was guilty of the charge to which he pled guilty.

The Third Specification concerns the conviction for offering a false instrument for filing, which involved submitting a Medicaid billing for medical services that had not been rendered. The Appellant acknowledged that there was an ongoing practice at the medical office where he once worked, All City Family Health Care, to submit billings for which there was no medical justification. He admitted that he was aware of this and for nine months accepted money "to look the other way." He testified that he eventually became directly involved with the fraud and profited from it.

The Respondent argued in mitigation that he voluntarily turned himself in to the prosecutor and confessed his crimes. He testified that he cooperated with the prosecutor and that this cooperation led to the conviction of several other people at All City Family Health Care. This cooperation and the resulting convictions are corroborated by a March 24, 2004 letter signed by Richard Harrow, Esq., of the New York State Attorney General's Medicaid Fraud Control Unit (Respondent Ex. F). The Respondent also argued that his remorse for his crime is demonstrated by the fact that he made reimbursement of \$60,000.00, the amount of his illegal profits.

The Hearing Committee is unimpressed with this argument. The Respondent did not go to the prosecutor until shortly after he learned that there was a criminal investigation of All City Family Health Care in progress. He confessed and provided information about others not because he regretted his crimes, but because he determined that he was in serious trouble and that this tactic would result in a lighter sentence for his criminal behavior. The timing of his confession renders his explanation for his confession suspect. This Hearing Committee, which observed the Respondent throughout his

testimony, found his testimony on this point totally lacking in credibility. Likewise, the Hearing Committee does not believe that returning the \$60,000.00 proves the Respondent's remorse. It is simply what the Respondent needed to do to receive a light sentence.

The Respondent also testified that his participation in this criminal activity was the result of financial desperation. Prior to obtaining employment at All City Family Health Care, he had been disabled and unable to work for two years. He was also in the process of adopting a child, which was an expensive undertaking. He testified that but for these financial difficulties, he would have resisted the criminal activity.

The Respondent also introduced evidence of the high quality of the medical care that he provides. His three witnesses testified that the Respondent is exceptionally dedicated to his patients and is a highly talented practitioner.

The Hearing Committee does not doubt the quality of the Respondent's medical care, nor does it doubt that he was having financial problems at the time of the criminal activity. These arguments in mitigation, however, are far outweighed by the Respondent's criminal behavior. The Respondent, facing financial difficulties, should have found another job. If necessary, he should have found two jobs, as a physician assistant or in some other occupation, rather than choosing criminal behavior to solve his financial problems. This Hearing Committee also does not want to send the message that practitioners who provide excellent care need not fear a severe sanction for fraudulent billing.

The Petitioner recommended that the Respondent's license be revoked. The Respondent predicted that such a penalty would prevent him from being able to support his family. He stated that this would put him on public assistance. This argument presents a false dilemma. The Respondent is not limited to two possibilities, being a

physician assistant or being on public assistance. There are other occupations that are available to him and he should not pretend otherwise.

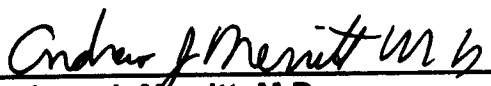
Given the inadequacy of the mitigating factors regarding the offering a false instrument for filing conviction and the absence of mitigating factors regarding the marijuana possession conviction, the Hearing Committee has decided that the Respondent's license should be revoked. The commission of two crimes, one of which was a felony and an act of dishonesty related to the Respondent's profession, merit this sanction.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice as a physician assistant is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Marcellus, New York
6/28/04, 2004

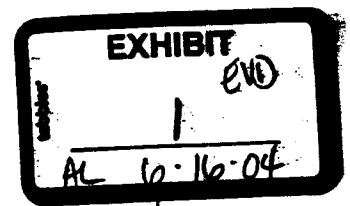


Andrew J. Merritt, M.D.
Chairperson

James Egnatchik, M.D.
Jean Krym

APPENDIX 1

ORIGINAL



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

IN THE MATTER

OF

ANTHONY CELENTANO, R.P.A.
CO-04-01-0439-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: ANTHONY CELENTANO, R.P.A.
60-34 Flushing Avenue
Maspeth, NY 11378

ANTHONY CELENTANO, R.P.A.
Brooklyn Family Center
1155 Broadway
Brooklyn, NY 11221

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached, hereto, and made a part hereof, has determined that **ANTHONY CELENTANO, R.P.A.**, Respondent, licensed to practice medicine in New York state on September 30, 1977, by license number 000764, has been found guilty, based on a plea of guilty, of committing an act constituting a felony under New York State law, in the Supreme Court of the State of New York, County of Kings, New York.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **ANTHONY CELENTANO, R.P.A.**, Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine. This order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 19th day of May, 2004 at 10:00 am in the forenoon at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents. 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 that 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. Respondent has the right cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED, AND/OR THAT
YOU MAY BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE
URGED TO OBTAIN AN ATTORNEY FOR THIS
MATTER.**

DATED: Albany, New York

April 14, 2004

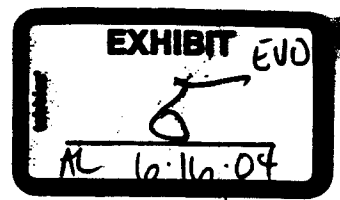


ANTONIA C. NOVELLO, M.D., M.P.H, Dr. P.H.,
Commissioner

Inquires should be addressed to:

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

ORIGINAL



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

IN THE MATTER
OF
ANTHONY CELENTANO, R.P.A.
CO-04-01-0439-A

AMENDED
STATEMENT
OF
CHARGES

ANTHONY CELENTANO, R.P.A., the Respondent, was authorized to practice medicine as a Physician Assistant in New York state on September 30, 1977, by the issuance of license number 000764 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 22, 1988, Respondent was convicted of Criminal possession of marijuana, in the fourth degree, a class A misdemeanor, and was sentenced to a one (1) year Conditional Discharge.

B. On or about December 7, 1990, Respondent prepared and submitted, to the New York State Department of Education, a Delayed Registration Application, wherein he falsely answered "No" to question "1.b. Since you^P last registered have you been convicted of any crime (felony or misdemeanor) in any state or country or have you been charged with any crime the disposition of which was other than by acquittal or dismissal?"

C. On or about November 21, 2003, in the Supreme Court of the State of New York, County of Kings, New York, Respondent was found guilty, based on a plea of guilty, of Offering a false instrument for filing in the fifth degree, a class E felony, and on or about January 12, 2004, was sentenced to a Conditional Discharge - three (3) years and to pay \$60,000.00 restitution, a \$200.00 surcharge, and a \$10.00 victim's assistance fee.

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law § 6530 (2) by practicing the profession fraudulently, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND AND THIRD SPECIFICATIONS

Respondent violated New York State Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

2. The facts in Paragraphs A.
3. The facts in Paragraph C.

FOURTH SPECIFICATIONS

Respondent violated New York Education Law §6530(20) by conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

4. The facts in Paragraphs A and/or B.

FIFTH SPECIFICATION

Respondent violated New York State Education Law § 6530(21) by willfully making or filing a false report required by law or by the department of health or by the education department, in that Petitioner charges:

5. The facts in Paragraphs A and/or B.

DATED: *May 24*, 2004
Albany, New York


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