



# 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 10, 2006

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Enrique M. Bursztyn, M.D.  
2 Seward Avenue  
Utica, New York 13502

Enrique M. Bursztyn, M.D.  
Little Falls Hospital  
140 Burwell Street  
Little Falls, New York 13365

Robert Bogan, Esq.  
NYS Department of Health  
Hedley Building -4<sup>th</sup> Floor  
433 River Street  
Troy, New York 12180

Arthur S. Friedman, Esq.  
275 Madison Avenue  
Suite 1000  
New York, New York 10016

**RE: In the Matter of Enrique M. Bursztyn, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 06-150) 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.

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 Respondent or the Department may seek a review of a committee determination.

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.

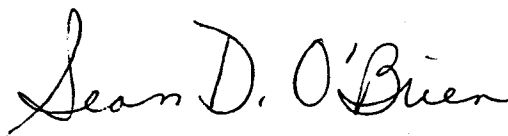
The notice of review served on the Administrative Review Board should be forwarded to:

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:cah

Enclosure

IN THE MATTER  
OF  
ENRIQUE M. BURSZTYN, M.D.

DETERMINATION  
AND  
ORDER  
BPMC #06-150

A hearing was held on June 21, 2006, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated March 20, 2006, were served upon the Respondent, **Enrique M. Bursztyn, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Patrick F. Carone, M.D., M.P.H.**, Chairperson, **Trevor A. Litchmore, M.D.**, and **Ms. Virginia R. Marty**, 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.**, of Counsel. The Respondent appeared in person and was represented by **Arthur S. Friedman, Esq.**

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**BACKGROUND**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

#### **WITNESSES**

For the Petitioner:

None

For the Respondent:

Bryan J. Venerus, M.D.  
Luke A. Handy, M.D.  
Mr. Jonathan Lawrence  
Enrique M. Bursztyn, M.D.

#### **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.

1. Enrique M. Bursztyn, M.D., the Respondent, was authorized to practice medicine in New York State on April 10, 1981, by the issuance of license number 145707 by the New York State Education Department (Petitioner's Ex. 4).

2. On June 22, 2005, the Maryland State Board of Physicians ("Maryland Board"), by a Final Decision and Order ("Maryland Order"), denied the Respondent's Application for Initial Medical License, based on willfully making false representations on the license application (Petitioner's Exhibit 5).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;"
- New York Education Law Section 6530(21) - "Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so;"

The Respondent was also charged with acts that, had they occurred in New York State, would have constituted professional misconduct pursuant to New York Education Law Section 6530(1) - "Obtaining the license fraudulently..." The Hearing Committee does not sustain this allegation for reasons explained below.

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(b) by 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..."

VOTE: Sustained (3-0)

## SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having his application for license to practice medicine refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

## HEARING COMMITTEE DETERMINATION

The Maryland Board denied the Respondent's application for a license to practice medicine because of several false answers given by the Respondent on his May 15, 2002, application to practice medicine (Respondent's Exhibit C). The Respondent answered "No" to questions about whether any licensing or disciplinary board had ever taken action against his license and whether any licensing or disciplinary board had filed charges against him or investigated him. In fact, such an investigation had taken place in New York State in 2001. That investigation resulted in the filing of a Statement of Charges against the Respondent and a Consent Agreement and Order, dated November 28, 2001, that imposed penalties on the Respondent (Petitioner's Exhibit 6). The penalties were a fine and the requirement that he perform 150 hours of community service.

The Respondent also provided false information on the Maryland application about his malpractice litigation history. On the application, the Respondent stated that there had been three malpractice claims filed against him in his career and that two such claims had been filed or settled in the last five years. The Maryland Order held that the actual

numbers were seven claims filed during the Respondent's career and four claims filed or settled in the last five years.

Public Health Law Section 230(10)(p) seriously limits the scope of an expedited hearing such as this hearing. The Hearing Committee is required by this statute to accept the findings of the Maryland Board without question. Any argument by the Respondent that the Maryland Board got the facts wrong must be rejected automatically. The Respondent, however, despite repeated holdings in the Maryland Order that the false answers were not the result of honest mistakes, testified that he did not intentionally provide false answers on the Maryland application.

The Respondent testified that he had answered "No" to the question about whether any licensing or disciplinary board had taken action against his license because he had believed at that time that the penalties imposed in New York in November 2001, a fine and community service, did not constitute action against his license. The Respondent made this same argument in the Maryland proceeding. The Maryland Board rejected this argument as "not credible in light of the true facts." (page 9 of the Maryland Order, Petitioner's Ex. 5). Regarding the Respondent's claim that he made an honest mistake in answering the question about whether any licensing or disciplinary board had filed charges against him or investigated him, the Maryland Board found this claim "illogical" and that "he deliberately falsified his application." (page 9 of the Maryland Order). Regarding the Respondent's claim that the inaccurate information about his malpractice history was an honest mistake, the Maryland Board concluded that it "does not believe that Dr. Bursztyn did not remember that he had substantially more than three claims against him in his medical career...In this instance also, Dr. Bursztyn deliberately falsified his application." (pages 9-10 of the Maryland Order). The Maryland Board concluded that the Respondent "decided for himself what information the Board would see on his

application for a medical license. Dr. Bursztyn's selective disclosures were an attempt to thwart the Board in its mission to protect the public." (page 11 of the Maryland Order).

These conclusions in the Maryland Order concerning the reason for the false answers are the conclusions that must be adopted by this Hearing Committee. It will be concluded that the Respondent provided false answers intentionally for the purpose of misleading the Maryland Board.

These intentionally false answers, according to the New York Statement of Charges, would constitute professional misconduct in New York State in three ways: obtaining a license fraudulently (Education Law Section 6530[1]), moral unfitness (Education Law Section 6530[20]), and willfully making or filing a false report (Education Law Section 6530[21]). The Hearing Committee agrees with the Statement of Charges regarding the allegations of moral unfitness and willfully making or filing a false report. The Hearing Committee disagrees with the allegation regarding obtaining a license fraudulently. Although the Respondent attempted to obtain a Maryland license fraudulently, the attempt was unsuccessful. The Respondent cannot be sanctioned for obtaining a license fraudulently when he did not obtain a license at all.

The testimony of Dr. Venerus, Dr. Handy and Mr. Lawrence, all of whom work with the Respondent at Little Falls Hospital in Little Falls, New York, makes two points. One is that the Respondent is a skillful and dedicated radiologist. The other is that Little Falls Hospital is in a medically underserved rural area and that a revocation or suspension of the Respondent's license would cause great difficulties for the hospital and its patients.

These are relevant concerns, but they do not outweigh the seriousness of the Respondent's dishonesty in his Maryland application. The Respondent, who refused during the hearing to take responsibility for making intentionally false answers on the Maryland application, needs to understand that his dishonest behavior is totally



unacceptable. The Hearing Committee concludes that the only way that that can be accomplished is with a severe penalty. The Respondent's license to practice medicine will be suspended for one year. The commencement of the suspension will be 30 days from the effective date of this Determination and Order to give Little Falls Hospital time to make alternate arrangements. The Respondent will also be required to complete continuing medical education courses in the field of ethics.

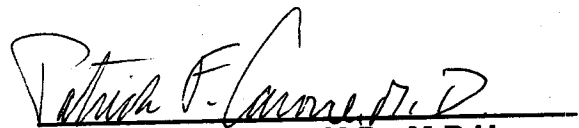
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine is suspended for one year. The suspension will commence 30 days after the effective date of this order.
2. The Respondent is ordered to complete 60 hours of continuing medical education in the field of ethics no later than the conclusion of the suspension of his license. All such courses must be approved in advance by the Petitioner's Office of Professional Medical Conduct.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

**DATED: Massapequa Park, New York**

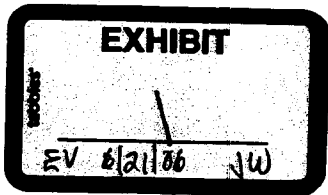
5 July, 2006



**Patrick F. Carone, M.D., M.P.H.  
Chairperson**

**Trevor A. Litchmore, M.D.  
Virginia R. Marty**

# APPENDIX 1



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

IN THE MATTER  
OF  
ENRIQUE M. BURSZTYN, M.D.  
CO-05-07-3684-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: ENRIQUE M. BURSZTYN, M.D.  
2 Seward Avenue  
Utica, NY 13502

ENRIQUE M. BURSZTYN, M.D.  
Little Falls Hospital  
140 Burwell Street  
Little Falls, NY 13365

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 19<sup>th</sup> day of April 2006, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 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.

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. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before April 10, 2006.

Pursuant to the provisions of New York 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 April 10, 2006, 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

*March 20*, 2006

  
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

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

---

IN THE MATTER  
OF  
ENRIQUE M. BURSZTYN, M.D.  
CO-05-07-3684-A

---

STATEMENT  
OF  
CHARGES

ENRIQUE M. BURSZTYN, M.D., Respondent, was authorized to practice medicine in New York State on April 10, 1981, by the issuance of license number 145707 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about June 22, 2005, the Maryland State Board of Physicians (hereinafter "Maryland Board"), by a Final Decision and Order (hereinafter "Maryland Order"), DENIED Respondent's Application for Initial Medical License, based on willfully making false representations on his application for an initial medical license thereby deliberately falsifying his application.

B. The conduct resulting in the Maryland Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York State Education Law §6530 (1) (obtaining the license fraudulently);
2. New York State Education Law §6530 (20) (moral unfitness); and/or
3. New York State Education Law §6530 (21) (willfully making or filing a false report required by law or by the department of health or the education department).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law Section 6530 (9)(b) by 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, in that Petitioner charges:


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

**SECOND SPECIFICATION**

Respondent violated New York State Education Law Section 6530 (9)(d) by having his application for license to practice medicine refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

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

DATED: *March 20*, 2006

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

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias



The exact wording of the rules is found at 10 NYCRR Part 51 Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding. Pursuant to Public Health Law §230, the Notice of Hearing must, additionally, specify that the licensee shall file a written answer.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer or Responsive Pleading. A party may serve a answer or response to the allegations of the Department. In matters governed by PHL §230, the licensee is required to file a written answer to each of the charges and allegations of the Department. Under the law, any charge or allegation which is not so answered shall be deemed admitted.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, document or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as is practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent, and Surrender Orders. At any

time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

§1.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

~~Complaints relating to Public Health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.~~

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of the claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

§1.12 Hearing Officer or Hearing Committee Report. The report or determination should be submitted within 60 days of completion of the hearing.

§1.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order any party may submit exceptions to said report and proposed order

to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed. Pursuant to PHL 230(c), a notice of request for review of the Hearing Committee determination must be served upon the ARB within 14 days of service of the determination. All parties have 30 days thereafter to submit briefs and 7 days from service of a brief to submit a reply.


51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

~~51.16 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.~~

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public Health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York  
March 10, 1997

  
HENRY M. GREENBERG  
General Counsel