



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

Wendy E. Saunders  
Chief of Staff

February 1, 2008

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Kenneth Zahl, M.D.

Redacted Address

Amy J. Kulb, Esq.

Jacobson, Goldberg & Kulb

585 Stewart Avenue

Garden City, New York 11530

Robert Bogan, Esq.

NYS Department of Health

433 River Street - Suite 303

Troy, New York 12180-2299

Jude Mulvey, Esq.

NYS Department of Health

ESP-Corning Tower-Room 2509

Albany, New York 12237

**RE: In the Matter of Kenneth Zahl, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-16) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

Redacted Signature  
(James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER  
OF  
KENNETH ZAHL, M.D.

DETERMINATION

AND

ORDER

**COPY**

A hearing was held on January 23, 2008, 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 May 24, 2006, were served upon the Respondent, **Kenneth Zahl, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D.**, Chairperson, **Eleanor Kane, M.D.**, and **Mary Ann T. Cresanti, N.P.**, 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 **Thomas Conway, Esq.**, General Counsel, **Jude Mulvey, Esq.**, of Counsel. (During a prehearing conference held on October 15, 2007, the Petitioner was represented by Thomas Conway, Esq., General Counsel, **Robert Bogan, Esq.**, of Counsel.) The Respondent was represented by Jacobson, Goldberg & Kulb, **Amy J. Kulb, 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.

## **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:

Kenneth Zahl, 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. Kenneth Zahl, M.D., the Respondent, was authorized to practice medicine in New York State on August 27, 1982, by the issuance of license number 151413 by the New York State Education Department (Petitioner's Ex. 4).

2. By a Final Order dated April 3, 2003 ("First New Jersey Order"), and by a Final Order Revoking Licensure ("Second New Jersey Order"), dated May 10, 2006, the New Jersey Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners ("New Jersey Board") revoked the Respondent's license to practice medicine and required him to pay \$30,000.00 in civil penalties, costs in an amount to be determined subsequently, and restitution of \$1,700.00, based on:

- on multiple occasions, billing the Medicare Program for and receiving reimbursement from the Medicare Program for anesthesia services allegedly performed for two patients during overlapping or concurrent time periods,
- on multiple occasions, creating false patient records by writing records indicating that the Respondent was providing anesthesia services to two patients at the same time and by writing the name of another anesthesiologist in patient records when the other anesthesiologist did not participate in the provision of such services,
- submitting a claim to a disability insurance carrier containing assertions that he knew to be untruthful to induce the carrier to make disability payments,
- on two occasions, double billing and retention of double payments for medical services, and
- failure to maintain good moral character. (Petitioner's Ex. 5, 6 and 7).

#### **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(2) - "Practicing the profession fraudulently or beyond its authorized scope;"

- New York Education Law Section 6530(16) - "A willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules, or regulations governing the practice of medicine;"

- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;" and

- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

### **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 license to practice medicine revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in revocation or other disciplinary action 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 record in this case discloses that the New Jersey Board found a wide array of dishonest and deceptive actions by the Respondent, many of which concerned billing for

his medical services. The First New Jersey Order also found that the Respondent had obtained disability insurance payments for himself under false pretenses and had kept false medical records. The New Jersey Board concluded that these actions proved that the Respondent had failed to maintain the level of good moral character required of a physician.

The New Jersey Orders, which are found in Petitioner's Ex. 5, adopted (with one minor revision) the findings of the New Jersey Administrative Law Judge who conducted an administrative hearing in this case. The findings of the Administrative Law Judge appear in an Initial Decision (Petitioner's Ex. 6) and an Order – Partial Summary Judgment (Petitioner's Ex. 7).

Some of the issues raised by the Respondent amounted to denials, some direct and others indirect, that the New Jersey findings against him were accurate. As noted above, Public Health Law Section 230(10)(p) prohibits this Hearing Committee from considering such arguments. All these arguments, therefore, are summarily rejected. Some of them, however, will be described below to illustrate various problems with other aspects of the Respondent's case.

The Respondent argued that none of the acts that the New Jersey Board found the Respondent to have committed would have amounted to professional misconduct, had these acts occurred in New York State. Therefore, according to this argument, no finding of professional misconduct can be made in this Determination and Order. This Hearing Committee disagrees. Petitioner's Ex. 5, 6 and 7 disclose numerous acts that would be professional misconduct as that term is defined by New York State Education Law Section 6530, had they occurred in New York State. Therefore, pursuant to Education Law Section 6530(9)(b) and (d), the portion of the New York State professional misconduct definition that renders such acts professional misconduct despite the fact that

they were committed outside New York State, the Respondent's acts constitute professional misconduct under New York State law.

The New Jersey Board found that the Respondent had billed the Medicare Program improperly and had received payment from that program for those improper billings. In 97 instances, the Respondent billed Medicare for supplying anesthesia services to two patients on the same day, using a billing code that can be used only for periods of time that the anesthesiologist is physically present with the patient. In these 97 cases, however, the Respondent billed for overlapping time periods. In other words, the billing for the first patient indicated that the Respondent's services concluded at a time of day later than the time that the services commenced for the second patient. The Respondent, in effect, claimed that he had been in two operating rooms at one time. The New Jersey Board rejected the Respondent's argument that the problem was an honest mistake resulting from confusion over the Medicare Program's billing requirements. The New Jersey Board concluded that the overlapping billings were the result of "dishonesty, deception and misrepresentation..." (Petitioner's Ex. 6, p. 48). We conclude that if this practice had occurred in New York State, it would have constituted fraud. The Respondent knowingly provided false information to the Medicare Program for the purpose of inducing that program to provide him with more reimbursement than the amount to which he was entitled. If this is not fraud, nothing is. Such conduct also is evidence of moral unfitness in the practice of medicine.

Part of the inadequate recordkeeping finding of the First New Jersey Order is related to the overlapping billing problem, described above. The Respondent wrote in patient charts that he was present at the times for which he submitted overlapping billings. However, he could not have been with both patients at one time. Either one



chart entry or the other had to be false. To write in a chart that services were provided at a time when they were not is inadequate recordkeeping under New York State law.

The New Jersey Board also found that the Respondent had written false patient records in another way. In several instances, he wrote in the patient record the name of an additional anesthesiologist. The New Jersey Board concluded that in these instances, the additional anesthesiologist played no role in the provision of anesthesia services. One of them was not even in the building where the services were performed. Another was in the building, but only for a job interview with the Respondent. In New York, as in New Jersey, it is professional medical misconduct, specifically inadequate recordkeeping, to indicate falsely in the chart that another anesthesiologist played a role in the provision of a medical service. The Respondent argued that there was no false information in these charts because although the other anesthesiologist's name appears in the charts, no statement is made claiming that any anesthesia service was provided by the other anesthesiologist. This argument is rejected. There is only one reason for putting the name of another anesthesiologist in these charts – to cause anyone reading the chart to believe that the other anesthesiologist participated in the provision of the anesthesiology services. That makes these charts false medical records. The Respondent also argued that these entries of other anesthesiologist names should not be considered professional medical misconduct because there was no evidence on why he made such entries and because no excessive billings resulted from these entries. This argument is rejected. The fact remains that in one part of the medical record for several patients, the Respondent included information that was untrue. This is inadequate recordkeeping.

Another finding of the New Jersey Board involved a disability insurance claim. After the Respondent injured his thumb, he informed his disability insurance carrier that he was disabled in that he was physically unable to perform anesthesia services. The carrier

ruled in favor of this claim and commenced paying disability payments to the Respondent. The Respondent continued to perform and bill for anesthesia services while receiving disability checks from the carrier. During this time period, the Respondent submitted monthly reports to the carrier in which he stated that he performed no anesthesia services and expected to be unable to do so in the foreseeable future.

The New Jersey Board concluded that the Respondent's conduct with the disability insurance carrier constituted "dishonesty, deception and misrepresentation." (Petitioner's Ex. 7, pp. 14-15). The Petitioner argued that such conduct, had it occurred in New York State, would have constituted fraud in the practice of medicine. The Respondent argued that the facts regarding the disability insurance issue, had they occurred in New York State, could not have constituted fraud in the practice of medicine, because this was a private matter between the insurance carrier and himself that did not take place in the Respondent's practice of medicine. The Hearing Committee disagrees with the Respondent. The Respondent's plan was not simply to obtain money to which he was not entitled from the insurance carrier. His plan was to continue receiving reimbursement from Medicare or other entities for providing anesthesia services while receiving additional money from the insurance carrier that he had misled into believing that he could no longer provide such services. The plan had two parts, but there was only one plan. The insurance fraud and the Respondent's medical practice were intertwined and, therefore, the insurance fraud was related to his practice of medicine.

The disability insurance allegation also supports a finding of conduct in the practice of medicine that evidences moral unfitness in the practice of medicine. The rationale for this conclusion is the same as the rationale above for concluding that the Respondent committed fraud in the practice of medicine.

The duplicate billing and retention of duplicate payments charge also is supported by the hearing record. On two occasions, the Respondent treated a patient who had two health insurance companies. In each instance, the Respondent filed insurance claims with both companies as primary insurers and received from both the benefits that a primary, rather than a secondary carrier, would pay. In one of these cases, the Respondent's billing assistant brought the duplicate payments to the Respondent's attention and he said that he would take care of the problem. He did not do so. In both instances, he retained the duplicate payments until more than four years later when New Jersey authorities discovered the problem and brought charges against him. The New Jersey Board concluded that this constituted dishonesty and fraud. This Hearing Committee concludes that, had this conduct happened in New York State, it would have constituted fraud and moral unfitness in the practice of medicine.

The final finding of the New Jersey Board was that the Respondent did not maintain good moral character. This finding was based on all the acts of dishonesty described above. This Hearing Committee has come to a similar conclusion. Had these acts occurred in New York State, they would have been acts of moral unfitness in the practice of medicine and would have supported a finding of professional misconduct.

The Respondent urged this Hearing Committee, should it reject his arguments that he did not commit professional misconduct as defined in New York law, to impose a penalty less severe than a revocation of his license. The Petitioner argued that a license revocation was the only adequate penalty in this case. We agree with the Petitioner. The Respondent made many arguments in support of his position. All these arguments have been considered and found unpersuasive. The more substantial arguments and our reasons for not accepting them are summarized below.

The Respondent noted that the New Jersey findings against him were based on events of more than ten years ago and that there was no reason to believe that any similar problems would happen again if he were allowed to keep his medical license. He testified that he was humbled by the disciplinary process in New Jersey and that he had learned from his mistakes. He claimed to be remorseful. He testified that he had taken numerous continuing medical education courses regarding coding and billing and had changed his billing practices to ensure that the problems would not be repeated.

The Hearing Committee rejects this argument for one basic reason. The Respondent never admitted in his testimony that he did anything intentionally wrong. He never admitted to deception, dishonesty or misrepresentation, despite the appearance of those terms throughout Petitioner's Ex. 5, 6 and 7 to describe his actions. At times, he gave testimony inconsistent with the New Jersey findings of intentional wrongdoing. In his testimony, the Respondent described the billings for overlapping time periods as an "error." He testified that he solved this problem by consulting lawyers and taking courses on billing requirements so that he would know the correct way to bill Medicare. In other words, he characterized the problem as not knowing the right way to bill, despite the very clear finding of the New Jersey Board that what he did wrong was the result of dishonesty. Another example of this problem is the Respondent's testimony concerning the two cases of duplicate reimbursement that he had received from two insurance companies. When asked what he had learned from these incidents, the Respondent testified that he learned that he must be the person who opens all of his mail. He added that he upgraded his billing software and checks patient accounts to make sure that there are no problems. This explanation is totally inadequate. The New Jersey Board found that the duplicate billings and the retention of duplicate payments from two insurance companies were the result of dishonesty and fraud. Opening all of one's own mail is not a

cure for dishonesty and fraud; it is a cure for unintentional mistakes. The Respondent provided no adequate answer on the question of what he had learned from the duplicate payments problem, because he refused to admit the true cause for the duplicate payments.

In general, it cannot be concluded that the Respondent has learned from the past because he is still denying the past. The passage of ten or more years since the incidents at issue might be a strong factor in the Respondent's favor if the Respondent were not still denying ten years later the true cause of the problems in New Jersey. His attempts to convince the Hearing Committee that he had not acted dishonestly ten years ago convinces us that he is just as dishonest today as he was then. He needed to acknowledge forthrightly what he really did wrong, but he failed to do so. This leads us to the conclusion that the passage of time has cured nothing.

Another argument of the Respondent is based on the nature of the professional misconduct. He noted correctly that none of the New Jersey findings involve patient care issues or patient abandonment issues. The Respondent contended that this factor should lead to the conclusion that a revocation of his license is too severe a penalty. This argument is rejected. This Hearing Committee does not want to send the message that a physician who provides conscientious medical care need not worry about the revocation of his or her medical license for fraudulent financial practices. When the fraudulent billings are as numerous as they are here and when the physician who made the billings refuses to admit the truth about his dishonesty, a revocation is warranted.

A related argument by the Respondent is that the amount of money involved in the overbilling for overlapping time periods was not much more than \$2,000.00. He argued that this is not a large enough transgression to merit a license revocation. This argument fails to recognize that there were 97 such overbillings. This was not a single aberrant act

by an otherwise honest person. It is a dishonest course of conduct. The Respondent's argument also fails to recognize the fact that the Respondent also received money to which he was not entitled for his other acts of fraud and dishonesty. For instance, his disability carrier paid him \$118,000.00 as a result of his false claim that his injury rendered him unable to perform anesthesia services. This is not a small amount of money. The Respondent's argument is unpersuasive.

The Respondent argued that the quality of medical care that he has provided to his patients has been exemplary. He portrayed himself as a scholar and an innovator who has transformed the lives of many patients who had suffered from debilitating pain. In support of this position, the Respondent offered into evidence Respondent's Ex. W, X, EE, FF and HH. These exhibits contain letters from 26 people who either are patients of the Respondent or family members of patients, including two letters from patient C.H. and two letters from H.S., a relative of a patient. (Respondent's Ex. W and FF contain duplicates of one of the letters from H.S.) These exhibits also contain letters from nineteen of the Respondent's medical colleagues. (A letter in Respondent's Ex. EE from Melinda Mingus, M.D., also appears in Respondent's Ex. HH.)

It is undeniable that these letters portray the Respondent in a very positive light, both for his skill and his dedication. However, as is always the case with written statements of commendation, the weight to be given the evidence is affected by the fact that it is hearsay and, therefore, not subject to cross-examination.

Another problem with these letters is their similarity. The same language, or variations on the same language, is seen in multiple letters. Respondent's Ex. W is a group of letters from patients and family members of patients. Some have dates in March of 2003 and others are undated. They are written by patients and family members of patients. The letter of J.H. states:

I understand none of the charges involve any patient injury. Without commenting on the merits of the charges against him, I urge the Medical Board to consider the above before imposing any penalties or sanctions.

The letter of G.S. states:

I understand none of the charges involve any patient injury. Without commenting on the merits of the charges against him, I sincerely urge the medical board to consider my testimonial letter before imposing harsh penalties or sanctions against Dr. Kenneth Zahl.

S.V. wrote:

I understand that none of the charges against him involve any patient injury. Without commenting on the charges against him, I urge the Medical Board to consider the above, before imposing penalties or sanctions against him.

S.P.-K. wrote:

I understand none of the charges against Dr. Zahl involve any patient injury. Without commenting on the merits of the charges against him, I urge the Medical Board to consider the above before imposing harsh penalties or sanctions.

J.M wrote:

While I am not entirely familiar with all of the proceedings to date, I understand that none of the charges involve any patient injury. I must urge the Medical Board to consider Dr. Zahl's patients before imposing such harsh penalties.

The letter of M.S. states:

I ask that the Medical Board of Examiners consider my story involving Dr. Zahl, before imposing sanctions and/or harsh penalties against him. From what I understand none of the charges against him involve patient injury.

M.S.'s letter is a little different from the others, but it is basically a reversal of the order of the sentences and a shortening of the sentences.

Respondent's Ex. FF consists of seven letters from patients. They are all dated October 8, 2007. Six of the seven letters conclude with the same three sentences:

I had the opportunity to read about his New Jersey license revocation on the internet after he told me about it. I understand the charges against his NJ license do not involve anything related to patient care and to some extent

have to do with billing and record keeping and did not involve any criminal conduct or patient harm.

Please consider this letter in mitigation before imposing any severe penalties on his New York License.

This similarity or identity in language raises the question of the extent to which these letters were written by persons other than the persons who signed the letters. Aside from making minor variations in a standard form document, it is clear that parts of the letters definitely were not written by the persons who signed them. With no opportunity to cross-examine the people who signed the letters, this is an unresolved question that detracts from the weight that can be given the letters.

The letters cannot outweigh the many dishonest and fraudulent acts of the Respondent described in Petitioner's Ex. 5, 6 and 7, nor can they outweigh the Respondent's lack of candor during the hearing. The Respondent is a person who cannot be trusted and there is no adequate penalty available for this problem other than a revocation of his license to practice medicine. In order to reduce the disruption of medical services to the Respondent's patients, the first seven days of the revocation will be stayed pursuant to the authority granted to hearing committees by Public Health Law Section 230-a(9).

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The license of the Respondent to practice medicine in New York State is revoked.
2. The first seven days of the revocation are stayed.
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: Albany, New York  
Feb. 1, 2008, 2008

Redacted Signature

Lyon M. Greenberg, M.D.,  
Chairperson

Eleanor Kane, M.D.  
Mary Ann T. Cresanti, N.P.

# **APPENDIX I**

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

IN THE MATTER  
OF  
KENNETH ZAHL, M.D.  
CO-06-03-1649-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: KENNETH ZAHL, M.D.  
Redacted Address

KENNETH ZAHL, M.D.

KENNETH ZAHL, M.D.  
Skylands Pain Relief  
343 Mt. Hope Ave.  
Suite 506  
Rockaway, NJ 07866

KENNETH ZAHL, M.D.  
Liberty Pain Relief Clinic  
2333 Morris Avenue  
Suite 506  
Union, NJ 07083

**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 22<sup>nd</sup> day of June 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 June 12, 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 June 12, 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

*May 24*, 2006

Redacted Signature  
\_\_\_\_\_  
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

KENNETH ZAHL, M.D.  
CO-06-03-1649-A

STATEMENT

OF

CHARGES

KENNETH ZAHL, M.D., Respondent, was authorized to practice medicine in New York state on August 27, 1982, by the issuance of license number 151413 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 10, 2006, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (hereinafter "New Jersey Board"), by a Final Order Revoking Licensure (hereinafter "New Jersey Order"), revoked Respondent's license to practice medicine and required him to pay \$30,000.00 in civil penalties, costs, and \$1700.00 restitution, based on Medicare Claims for Overlapping, Concurrent Time Periods - Fraud, Deception, Misrepresentation and Professional Misconduct; Medicare Claims for Overlapping, Concurrent Time Periods - Violation of Medicare Regulations and Guidelines - Professional Misconduct; Creating False Patient Records - Time Entries; Creating False Patient Records - Anesthesiologist Entries; Disability Claims; Double Billing and Retention of Double Payments for the Same Services; and Failure to Maintain Good Moral Character.

B. The conduct resulting in the New Jersey 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 Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(16) (a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of medicine);
3. New York Education Law §6530(20) (moral unfitness); and/or

4. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

**SPECIFICATIONS**

**FIRST SPECIFICATION**

Respondent violated New York Education Law §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 Education Law §6530(9)(d) by having his license to practice medicine revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in revocation or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

DATED: *May 24*, 2006  
Albany, New York

Redacted Signature  
\_\_\_\_\_  
PETER D. VAN BUREN  
Deputy Counsel  
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