

BEFORE THE BOARD OF MEDICAL EXAMINERS


OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT :
 AND STATEMENT OF CHARGES AGAINST :
 JOSEPH SEBATE PORTA, M.D., : COMMISSIONER'S ORDER
 RESPONDENT. :

The above entitled matter came on for hearing before the Iowa Board of Medical Examiners on June 10, 1982. The Iowa Board of Medical Examiners adopted the Findings of Fact, Conclusions of Law and Decision on July 8, 1982.

Now on this 9th day of July, 1982, the undersigned having reviewed the findings, hereby orders that the respondents license to practice medicine and surgery in Iowa be and hereby is revoked.

IOWA STATE BOARD OF MEDICAL EXAMINERS


 Norman L. Pawlewski
 Commissioner
 Department of Public Health
 Lucas State Office Building
 Des Moines, Iowa 50319

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE)	
COMPLAINT AND STATEMENT)	
OF CHARGES AGAINST)	FINDINGS OF FACT,
JOSEPH SABATE PORTA, M.D.,)	CONCLUSIONS OF LAW,
)	AND DECISION
Respondent.)	

The above-entitled matter came on before the Board of Medical Examiners on June 10, 1982, in the conference room of the Iowa Medical Society, 1001 Grand Avenue, Des Moines, Iowa.

The hearing was conducted by Peter J. Fox, serving as hearing officer for the Board. Board members in attendance at the hearing were: Alexander Ervanian, M.D., Chairman; Rosalie Neligh, M.D., Secretary; Joseph Baker, D.O.; Jack Dodd, M.D.; John Gerrard, M.D.; Kathryn Gammack; Reid Motley, M.D.; and Alice Fanslow, Ph.d. The decision is rendered by the Board.

The State of Iowa was represented by Julie Pottorff, Assistant Attorney General.

The Respondent, Joseph Sabate Porta, M.D., was not represented by counsel and did not appear.

The hearing was open to the public.

The Board, having heard the testimony and examined the evidence, now renders its Findings of Fact, Conclusions of Law, and Decision as follows:

FINDINGS OF FACT

1. The Respondent was issued a license to practice medicine and surgery in the State of Iowa on August 29, 1978. This license is evidenced by Certificate No. 21302.
2. The Respondent practiced psychiatry in the area surrounding Sioux City, Iowa, during 1979 and 1980.
3. The Respondent was served by publication with notice of the Complaint and Statement of Charges and Order of Hearing.

4. During the practice of psychiatry, Respondent billed Title XIX for services, which were not performed, under the following circumstances:

A. The Respondent billed Title XIX for services in the case of female patient #1 in the amount of \$1,020 between August 1, 1980, and August 31, 1980. These billings were for 11 office visits and 6 hospital visits. The patient was seen by the Respondent in the hospital on two occasions and was never seen by the Respondent in his office.

B. The Respondent billed Title XIX for services in the case of female patient #2 in the amount of \$1,080 between June 7 and June 30, 1980. These billings were for 13 hospital visits and 5 office visits. The patient was never seen in the Respondent's office.

C. The Respondent billed Title XIX for services in the case of female patient #3 in the amount of \$4,980 between February 6, 1980, and May 31, 1980. These billings were for 43 hospital visits and 20 office visits. During the period February 6, 1980, and February 26, 1980, during which time the Respondent claimed bills for \$1,200 the patient was under the care of another psychiatrist. The patient was actually seen in the office only two times.

D. The Respondent billed Title XIX for service in the case of female patient #4 in the amount of \$900 for 15 office visits between February 28, 1980, and March 31, 1980. This patient was in the Respondent's office twice a week in February, 1980, however, this patient's sole function was to accompany her daughter to the Respondent's office. This patient was in the office at the request of the Respondent and at no time received any professional service from the Respondent.

E. The Respondent billed Title XIX for services in the case of female patient #5 in the amount of \$1,800 for 30 office visits between September 3, 1980, and November 27, 1980. The patient was seen at this Respondent's office a maximum of 10 times.

F. The Respondent billed Title XIX for services in the case of female patient #6 in the amount of \$1,560 for office visits. Female patient #6 is the nine-year-old daughter of female patient #5 and was at the Respondent's office on one occasion at which time she was introduced to the Respondent, but did not on that occasion or on any other occasion receive any professional services from the Respondent.

G. The Respondent billed Title XIX in the case of male patient #1 in the amount of \$10,291.50 for skilled nursing home visits, office calls and hospital visits between August 1, 1979, and November 28, 1980, when this patient had never been to the Respondent's office and had never been hospitalized during that time frame.

5. Respondent received reimbursement from the Department of Social Services for the services billed.

6. Respondent failed to keep records to substantiate the services billed.

7. An audit by the Department of Social Services revealed overpayments of the following amounts:

- A. Female patient #1 - \$960.00
- B. Female patient #2 - \$900.00
- C. Female patient #3 - \$4,260.00
- D. Female patient #4 - \$900.00
- E. Female patient #5 - \$1,320.00
- F. Female patient #6 - \$1,560.00
- G. Male patient #1 - \$10,171.50

8. The overpayments have not been voluntarily repaid by Respondent.

CONCLUSIONS OF LAW

1. Respondent made fraudulent representations in the practice of medicine and surgery, engaged in unethical conduct, and engaged in a practice detrimental to the public by billing Title XIX for services which he did not perform.

2. Respondent failed to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery by billing Title XIX for services which he did not perform.

3. Respondent committed acts contrary to honesty and good morals by billing Title XIX for services which he did not perform.

4. Respondent obtained fees by fraud and misrepresentation by billing Title XIX for services which he did not perform.

DECISION

The Board concludes from a careful examination of the testimony and exhibits that Respondent violated §§ 147.55, 148.6(a), and 148.6(g) of The Code and §§ 135.204(3)(a), 135.204(b), 135.204(c), 135.204(12), 135.204(25), and 135.204(27) of Chapter 470 of the Iowa Administrative Code as charged in the Complaint and Statement of Charges.

IT IS HEREBY ORDERED that the license of the Respondent, Joseph Sabate Porta, M.D., be revoked.

IOWA BOARD OF MEDICAL EXAMINERS

BY _____

ALEXANDER ERVANIAN, M.D.
Chairman

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT :
AND STATEMENT OF CHARGES AGAINST : COMPLAINT AND STATEMENT
JOSEPH SABATE PORTA, M.D., : OF CHARGES
RESPONDENT :

COMES NOW Ronald V. Saf, Executive Director of the Iowa State Board of Medical Examiners on this 18th day of February, 1982, and files this Complaint and Statement of Charges against Joseph Sabate Porta, M.D., a physician licensed pursuant to Chapter 147, Code of Iowa and alleges:

1. That Norman L. Pawlewski is the duly appointed, qualified and acting Commissioner of Public Health of the State of Iowa.
2. That Alexander Ervanian, M.D., Chairman; Joseph A. McCaffrey, Ph.D., Vice-Chairman; Rosalie B. Neligh, M.D., Secretary; Joseph B. Baker, D.O., Richard L. Carruthers, D.O., Jack L. Dodd, M.D., John L. Garred, M.D., Reid E. Motley, M.D., and Kathryn E. Gammack are the duly appointed, qualified and acting officers and members of the Iowa State Board of Medical Examiners.
3. That the respondent is a resident of Sioux City, Iowa and was issued license number 21302 to practice medicine and surgery in the State of Iowa on August 29, 1978, as recorded in Book 4 at page 1099 of the permanent records in the office of the Iowa Board of Medical Examiners.
4. That the respondent's license is current until June 30, 1982.
5. That the respondent billed Title XIX for services in the case of female patient #1 in the amount of \$1,020 between August 1, 1980, and August 31, 1980. These billings were for 11 office visits and 6 hospital visits. The patient was seen by the respondent in the hospital on two occasions and was never seen by the respondent in his office.
6. That the respondent billed Title XIX for services in the case of female patient #2 in the amount of \$1,080 between June 7 and June 30, 1980. These billings were for 13 hospital visits and 5 office visits. The patient was never seen in the respondent's office.

7. That the respondent billed Title XIX for services in the case of female patient #3 in the amount of \$4,980 between February 6, 1980, and May 31, 1980. These billings were for 43 hospital visits and 20 office visits. During the period February 6, 1980, and February 26, 1980, during which time the respondent was billed for \$1,200 the patient was under the care of another psychiatrist. The patient was actually seen in the office only two times.

8. That the respondent billed Title XIX for service in the case of female patient #4 in the amount of \$900 for 15 office visits between February 28, 1980, and March 31, 1980. This patient was in the respondent's office twice a week in February, 1980, however, this patient's sole function was to accompany her daughter to the respondent's office. This patient was in the office at the request of the respondent and at no time received any professional service from the respondent.

9. That the respondent billed Title XIX for services in the case of female patient #5 in the amount of \$1,800 for 30 office visits between September 3, 1980, and November 27, 1980. The patient was seen at this respondent's office a maximum of 10 times.

10. That the respondent billed Title XIX for services in the case of female patient #6 in the amount of \$1,560 for office visits. Female patient #6 is the nine year old daughter of female patient #5 and was at the respondent's office on one occasion at which time she was introduced to the respondent, but did not on that occasion or on any other occasion receive any professional services from the respondent.

11. That the respondent billed Title XIX in the case of male patient #1 in the amount of \$8,911.50 for skilled nursing home visits, office calls and hospital visits between August 1, 1979, and November 28, 1980, when this patient had never been to the respondent's office, had never been in a skilled nursing home facility and had never been hospitalized during that time frame.

12. That the respondent billed Title XIX for a total of 1,248 units of psychiatric services which equals 312 hours for the month of September, 1980. These services were billed for 25 different Title XIX recipients and the amount claimed was \$18,720. The billings show that the respondent would have to spend 10.4 hours per day, based upon a 30 day month, just to see his Title XIX patients.

13. That on or about April 1, 1981, the Iowa Division of Criminal Investigation served a search warrant upon the respondent calling for the seizure of 70 patient files. A previous audit had shown over payments for all 70 patients. The respondent did not have any patient records on eleven of the patients.

14. That on August 13, 1981, the County Attorney for Woodbury County filed an Information accusing the respondent of Fraudulent Practice in the First Degree, a Class C Felony, and theft in the First Degree, a Class C Felony.

15. That on December 10, 1981, the respondent failed to appear for a pre-trial conference and a warrant for his arrest was subsequently issued.

16. That in addition to the above allegations the respondent has been guilty of other non-professional actions.

17. That the respondent is guilty of a violation of Section 147.55 (3) of the Code of Iowa which reads as follows:

"Knowingly making misleading, deceptive, untrue or fraudulent representatives in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established."

18. That the respondent is guilty of a violation of Section 148.6 (a) and 148.6 (c) and 148.6 (g) of the Code of Iowa which reads as follows:

148.6 (a) "Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of his profession."

148.6 (c) "Violating a statute of law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine."

48.6 (g) "Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to the patient need not be established; or the committing by a physician of an act contrary to honesty, justice, or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without this state."

19. That the respondent is guilty of a violation of Rules 470-135.204(3), 470-135.204(9), 470-135.204(12), 470-135.205(25), and 470-135.204(27) of the Iowa Administrative Code which reads as follows:

470-135.204(3) "Knowingly making misleading, deceptive, untrue or fraudulent representatives in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established."

a. "Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, and includes any representation contrary to his/her legal or equitable duty, trust or confidence and is deemed by the Board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another.

b. Engaging in unethical conduct includes, but is not limited to a violation of the standards and principles of medical ethics as set out in rules 135.401 (147, 148, 258A) and 135.402 (147, 148, 258A), as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable prudent physician acting in the same or similar circumstances in this state or when a physician is unable to practice medicine with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse."

470-135.204(9) "Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine."

470-135.204(12) "Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice or good morals, whether the same is committed in the course of his/her practice or otherwise, and whether committed within or without this state."

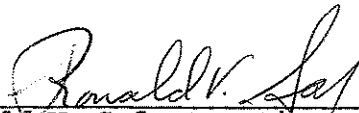
470-135.204(25) "Obtaining any fee by fraud or misrepresentation."

470-135.204(27) "Violating any of the grounds for the revocation or suspension of a license listed in sections 147.55 and 148.6 of the Code."

20. That paragraphs 18, 19 and 20 constitute grounds for which the license to practice medicine and surgery which was issued to the respondent can be revoked or suspended.

WHEREFORE the undersigned charges that Joseph Sabate Porta, M.D., has violated sections 147.55(3) and 148.6(a), (c), and (g) of the Code of Iowa and Rules 470-135.204(3), 470-135.204(9), 470-135.204(12), 470-135.204(25), and 470-135.204(27) of the Iowa Administrative Code and the undersigned prays the the Board enter an order fixing a time and place of hearing the Complaint and Statement of Charges,

The undersigned further prays that upon final hearing the Board enter its findings of fact and decision to suspend or revoke the license to practice medicine and surgery issued to Joseph Sabate Porta, M.D., on the 29th day of August, 1978, and for such other and further relief as the Board deems just in its premises.



Ronald V. Saf, Executive Director
Iowa Board of Medical Examiners
State Capitol Complex
Executive Hills West
Des Moines, Iowa 50319