

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Board of Registration
in Medicine

Adjudicatory Case No.
98-07

In the Matter of)
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Alan Fisch, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine ("the Board") has reason to believe that Alan Fisch, M.D., ("the Respondent") has engaged in conduct which calls into question his competence to practice medicine, including billing an insurance company for psychotherapy visits with two patients in 1992, when he never actually provided these services.

Facts Relating to the Respondent

1. The Respondent, Alan Fisch, M.D. was born on March 19, 1938. His business address is 149 Buckminster Road, Brookline, Massachusetts 02146. The Respondent is a 1963 graduate of the Tufts University School of Medicine. His principle area of specialty is psychiatry and he is board certified in that field. He

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has been licensed to practice medicine in the Commonwealth of Massachusetts since July 23, 1964 under Board Number 28176.

Facts Relating to Patient A and Patient A's wife

2. On divers days between September 1991 and January 1992, the Respondent provided psychotherapy services to Patient A.
3. In February 1992, the Respondent provided Patient A and his wife with a joint psychotherapy session. He thereafter impermissibly billed Patient A and his wife for separate psychotherapy sessions and he alleged that these visits had occurred on different dates.
4. Between February 1, 1992 and May 26, 1992, the Respondent billed Patient A's insurer for thirteen psychotherapy sessions that he never provided to Patient A.
5. Between February 1992 and June 1992, the Respondent billed Patient A's insurer for seven psychotherapy sessions that he provided to Patient A's wife, when in fact, he never provided these services to Patient A's wife.

Legal Basis for Proposed Relief

Pursuant to G.L. c. 112, sec. 5(c) and 243 CMR 1.03(5)(a)(3), the Board may discipline a physician who is guilty of engaging in conduct which calls into question his ability to practice medicine, including, but not limited to gross misconduct in the practice of medicine or practicing medicine fraudulently.

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Pursuant to G.L. c.112, sec 61, the Board may discipline a physician for gross misconduct in the practice of his or her profession.

Pursuant to 243 CMR 1.03(5)(a)(10), the Board may discipline a physician for practicing medicine deceitfully or engaging in conduct which has the capacity to deceive or defraud.

Pursuant to 243 CMR 1.03(5)(a)(18), the Board may discipline a physician for misconduct in the practice of medicine.

Under the provisions of *Raymond vs. Board of Registration in Medicine*, 387 Mass. 708 (1982) and *Levy vs. Board of Registration in Medicine*, 378 Mass. 519 (1979), the Board may discipline a physician for conduct that undermines public confidence in the integrity of the profession or for conduct which shows lack of good moral character.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, secs. 5, and 61. This adjudicatory proceeding will be conducted in accordance with the provisions of 801 CMR 1.01, et seq.

Nature of the Relief Sought

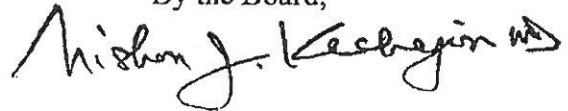
The Board is authorized and empowered to order appropriate disciplinary measures, which may include revocation or suspension of the Respondent's license. The Board may also order one or more of the following: reprimand, censure, fine, the performance of uncompensated public service, a course of

education and training or other limitations upon the Respondent's practice of
medicine.

Order

Wherefore, it is hereby **Ordered** that the Respondent show cause why he
should not be disciplined for the conduct described herein.

By the Board,



Nishan Kechejian, M.D.
Chairman

Dated: 2/11/98

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

Suffolk, ss.

Adjudicatory Case
No. 98-07 -DALA
(RM-98-144)

In the Matter of)
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Alan Fisch, M.D.)
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Final Decision & Order

This matter came before the Board for final disposition on the basis of the Chief Administrative Magistrate's Recommended Decision, dated June 30, 2000. After full consideration of the Recommended Decision, which is attached hereto, the Board adopts the Recommended Decision in part, amending it by deleting the last paragraph on page 15 and all of the language on page 16, and inserting in its place the following:

Conclusions of Law

- A. The Respondent is guilty of conduct which places into question his competence to practice medicine, including but not limited to practicing medicine fraudulently, in violation of G.L. c. 112, §5(c) and 243 CMR 1.03(5)(a)(3).
- B. The Respondent engaged in conduct which has the capacity to deceive or defraud, in violation of M.G.L. c. 112, § 5(h) and 243 CMR 1.03(5)(a)(10).
- C. The Respondent engaged in misconduct in the practice of medicine, in violation of 243 CMR 1.03(5)(a)(18).
- D. The Respondent engaged in conduct which undermines public confidence in the integrity of the medical profession and shows a lack of good moral character as defined by Raymond v. Board of Registration in Medicine, 387

Mass. 708 (1982) and Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

Sanction and Order

In the past, the Board has consistently responded strictly to cases involving physicians who have engaged in fraudulent billing practices. See Feldstein v. Board of Registration in Medicine, 387 Mass. 339 (1982); Levy; supra; In the Matter of Reinaldo de los Heros, M.D., Adjudicatory Case No. 97-55-XX (Final Decision and Order, March 12, 1997); In the Matter of Richard F. Finkel, M.D., Adjudicatory Case No. 96-42-DALA (Final Decision and Order, July 11, 1996); In the Matter of Richard P. Skodnek, M.D., Adjudicatory Case No. 94-42-DALA (Final Decision and Order, December 27, 1995); In the Matter of Michael Pearlman, M.D., Adjudicatory Case No. 91-8-DALA (Final Decision and Order, September 9, 1992), In the Matter of Paula J. Hallett, M.D., Adjudicatory Case No. 88-54-TR (Final Decision and Order, September 6, 1989). As we stated in Pearlman, "...the absence of criminal prosecution ... does not diminish the wrongfulness of the Respondent's acts or the responsibility of the Board to impose a sanction." Id. at 2.

The Respondent claims that his acts were not the consequence of a deliberate plan to defraud, but that the false bills attributable to errors by his billing service and various secretaries, or the result of forgetfulness on the part of the patients regarding the dates of their psychotherapy sessions. However, as we stated in Hallett, a physician "is responsible for the acts [related to billing] of [his] employees, and there [is] no justification for these false bills having been issued." Id. at 19. We reject the Respondent's various explanations, as we agree with the Chief Administrative Magistrate who found that "a clear pattern forms when the three groups of patients are looked at together....There are simply too many errors to ascribe them to mistake or memory lapse."

It appears from the cases of Patients A, B and C that the Respondent inflated the number of visits of each patient beyond that which actually occurred. It also appears with respect to the spouses of Patients A, B and C that the Respondent similarly inflated the number of visits of each spouse. We consider two factors to be evidence of the Respondent's attempts to disguise his misconduct: (1) the Respondent's inserting "accurate" information in the treatment records of Patients B and C, but indicating that the information came from the patients on days when, in fact, the Respondent had not seen the patients; and (2) the Respondent's recording of the treatment records of Patients B and C, and their spouses, in pencil.

Finally, we find significant support in the Chief Administrative Magistrate's findings of evidence of the Respondent's motive for engaging in his misconduct. For example, after Patient A accused the Respondent of "double billing," the Respondent stated the "Baystate did not pay real well." Similarly, the Respondent complained to his secretary "about the limitations on reimbursement from insurance companies," and stated that he "upcoded" or charged for more expensive services to make up for it."

Beyond the above-referenced pattern of misconduct found by the Chief Administrative Magistrate that initially gave rise to these proceedings, we also weigh heavily the coal seam of deceit that runs through the Respondent's various attempts at explaining the events in question. For instance, the Respondent advised the Board's investigator (and apparently also Bay State Health Care) that a billing error was attributable to the fact that his billing clerk confused the name of Patient A's wife with a similarly named person when he communicated the billing information to the clerk telephonically. The billing clerk, however, denied ever receiving this billing information telephonically. The Respondent also advised the Board's investigator that a billing error was attributable to the fact that his billing clerk had suffered a broken leg and the billing information had to be transmitted telephonically. The billing clerk testified that she never broke her leg. Finally, the

Respondent continued to maintain, under oath, at the hearing on this matter that he did, in fact, see Patient B and his spouse on all of the dates for which he billed. The Chief Administrative rejected this sworn testimony, as do we.

The Board is required to police the medical profession, and discipline those physicians "who do not live up to the solemn nature of their public trust." Levy, supra; see, Feldstein supra. In the past, the Board has generally revoked the licenses of physicians who engage in insurance fraud. In imposing a sanction, the Board has considered the particular circumstances of the cases before it, as well as the high regard in which the Respondent is apparently held by colleagues. The Board also notes that the events at issue occurred over eight years ago and that there have been no complaints since then.

Therefore, in light of the foregoing, the Board hereby indefinitely suspends the Respondent's license to practice medicine and imposes a fine of \$5,000.00, to be paid within thirty days. This suspension is stayed for thirty days to allow for the termination and orderly transfer of the Respondent's patients. The Respondent may petition for a stay of such suspension after two years upon demonstrating (1) that restitution has been made; and (2) the completion of 200 hours of community service in accordance with a plan approved in advance by the Board. Any stay may be conditioned upon the Respondent entering into a probationary agreement acceptable to the Board.

Because Patient D and her husband refused to testify, no evidence of their treatment with the Respondent was received. Therefore, all allegations pertaining to Patient D and his spouse are hereby dismissed.

The Respondent shall provide a complete copy of this Final Decision and Order with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery, to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-

of-state medical employer, whether or not he practices there; and the state licensing boards of all states in which he has any kind of license to practice medicine. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this Final Decision and Order. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive. The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.

This sanction is imposed for each of the violations set forth in Conclusions of Law "A" through "D," and not on the basis of any combination thereof. The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to M.G.L. c. 30A, §§ 14 and 15, and M.G.L. c. 112, § 64.

DATE: October 25, 2000

A handwritten signature in black ink, appearing to read "Rafik Attia", written over a horizontal line.

Rafik Attia, M.D.
Acting Chairman/Secretary

Notified by Certified
Mail. October 27, 2000
AB.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

DIVISION OF ADMINISTRATIVE
LAW APPEALS

Docket No. RM 98-144

BOARD OF REGISTRATION
IN MEDICINE,
Petitioner

vs.

ALAN FISCH, M.D.,
Respondent

Attorney for Petitioner:

Muriel A. Finnegan, Esquire
10 West Street
Boston, MA 02111

Attorney for Respondent:

Lee J. Dunn, Jr., Esquire
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Boston, MA 02109

Administrative Magistrate:

Christopher F. Connolly

RECOMMENDED DECISION

This matter was commenced by a statement of allegations dated February 11, 1998 in which the Petitioner, the Board of Registration in Medicine (hereinafter the Petitioner or the Board) alleged that the Respondent, Alan Fisch, M.D., engaged in conduct which calls into question his competence to practice medicine, including gross misconduct in the practice of medicine, engaging in conduct that has the capacity to defraud, and engaging in conduct that undermines public confidence in the integrity of the profession. These allegations include billing an insurance company for psychotherapy sessions with two patients in 1992, when he never actually provided those

services. Respondent in his Answer admits that billing errors occurred but denies he had any intent to defraud and that they were the result of clerical error.

The Petitioner referred the matter to the Division of Administrative Law Appeals for an adjudicatory hearing. On September 25, 1998 Petitioner's Motion to Amend the Statement of Allegations was allowed. The amended Statement of Allegations added six additional patients that Respondent allegedly billed insurance companies for services that he did not provide. The hearing began on October 28, 1998 and continued intermittently until June 22, 1999. A list of witnesses that testified, the documentary exhibits and the dates of hearing may be found in the transcripts of the hearing.

Based upon all of the evidence entered into the record at hearing, the reasonable inferences to be drawn therefrom and an assessment of the credibility of the witnesses, I make the following:

FINDINGS OF FACT

1. Dr. Fisch is a 1963 graduate of the Tufts University School of Medicine and has been licensed in the Commonwealth of Massachusetts since July 23, 1964. His principal area of practice is Psychiatry and he is Board Certified by the Board of Psychiatry and Neurology. Dr. Fisch spent the early part of his career working in community mental health programs. Thereafter, he engaged in the private practice of Psychiatry and he has treated a spectrum of adult Psychiatric disorders.

2. Dr. Fisch was a clinical instructor in psychiatry at Harvard Medical School from 1970 through 1995. He was an assistant professor in psychiatry at Tufts University Medical School. He holds hospital appointments at McLean Hospital, Metrowest Medical Center and Beth Israel Deaconess Hospital.

3. Between 1991 and 1992, Dr. Fisch saw patients in two primary locations: One Brookline Place, Brookline, Massachusetts and Union Avenue, Framingham, Massachusetts. He also had part time offices at McLean Hospital and Leonard Morse Hospital. In 1992, he merged all his offices into an office in his home on Buckminster Street, Brookline, Massachusetts and the Lincoln Medical Center, Framingham, Massachusetts.

FACTS RELATING TO PATIENT A AND HIS WIFE

4. Patient A and his wife were married between 1975 and 1994 and they had three children. In 1991 and 1992, Bay State Health Care insured them. Bay State Health Care limited their coverage for mental health services to twenty visits, per family, per year.

5. Between April 11, 1991 and January 30, 1992, Patient A engaged in individual Psychotherapy with Dr. Fisch.

6. Patient A's wife accompanied him to one therapy session with Dr. Fisch. This session occurred on January 21, 1992 and it lasted forty-five minutes.

7. Dr. Fisch told Patient A and his wife that he was going to bill Bay State Health Care for two office visits for them, instead of one joint therapy session. Patient A's wife told Dr. Fisch that this was double billing and that he could not do that.

8. After the joint therapy session, Patient A returned for at least one more visit with Dr. Fisch. Patient A never saw Dr. Fisch after February 1992. Patient A's wife never saw Dr. Fisch after January 21, 1992.

9. In the Fall of 1992, Patient A started seeing another Psychiatrist, Dr. Robert Coniaris. In May of 1993, he began receiving bills from Dr. Coniaris because Bay State Health Care was rejecting Dr. Coniaris' claims.

10. When Patient A's wife inquired with Bay State Health Care, she was told that Dr. Coniaris' claims were rejected because they had already exhausted their mental health benefits for 1992.

11. Dr. Fisch billed Bay State Health Care for fifteen office visits with Patient A in 1992: January 21, 1992, January 30, 1992, February 1, 1992, February 4, 1992, February 11, 1992, February 14, 1992, February 18, 1992, February 27, 1992, March 6, 1992, March 13, 1992, March 16, 1992, March 24, 1992, April 7, 1992, April 17, 1992, and May 26, 1992. Dr. Fisch saw and treated Patient A on January 21 and January 30, but not on the other thirteen dates.

12. Dr. Fisch billed Bay State Health Care for eight office visits with Patient A's wife: January 20, 1992, February 3, 1992, March 10, 1992, March 19, 1992, March 31, 1992, April 16, 1992, May 27, 1992, and June 4, 1992. Dr. Fisch did not see nor treat Patient A's wife on any of these dates.

13. Dr. Fisch reimbursed Bay State Health Care for these erroneous billings in an amount that was to Bay State's satisfaction and which permitted all of Patient A's treatment with Dr. Coniaris to be covered.

FACTS RELATING TO PATIENT B AND HIS WIFE

14. Patient B saw Dr. Fisch between the Fall of 1991 and the Spring of 1992. Patient B is a real estate developer. His internist referred him to Dr. Fisch because he was depressed, his business was in trouble and he had property in danger of foreclosure.

15. The Board's investigators contacted Patient B and Patient B's wife in approximately September 1998. Neither Patient B nor his wife filed a complaint against Dr. Fisch.

16. Patient B and his wife executed affidavits at the request of the Board's investigators.

17. Patient B saw Dr. Fisch on October 4, 1991, October 11, 1991, November 1, 1991, November 29, 1991, December 13, 1991, December 20, 1991, January 3, 1992, February 7, 1992, February 21, 1992, March 6, 1992 and March 27, 1992. Patient B did not see Dr. Fisch after March 27, 1992. Dr. Fisch billed and was paid for these visits by Patient B's health insurer, Bay State Health Care.

18. Patient B and Dr. Fisch had arranged to see each other once every other week, so that Patient B would not exceed the number of mental health visits authorized by his insurance carrier.

19. Dr. Fisch billed Bay State Health Care for twelve office visits with Patient B in 1991 and 1992; November 11, 1991, November 15, 1991, November 18, 1991, December 4, 1991, December 9, 1991, December 13, 1991, December 24, 1991, December 30, 1991, January 13, 1992, January 29, 1992, March 11, 1992 and March 20, 1992, when he did not see nor treat Patient B.

20. Information contained in Dr. Fisch's treatment records of Patient B is accurate, but it was not and could not have been conveyed to him on the dates recorded. Patient B explained that he did not discuss his father with Dr. Fisch on November 11, 1991 because he did not see Dr. Fisch on that day and because his father's birthday was on November

15th. Likewise, he did not refer to his anniversary occurring the week preceeding February 7, 1992 when it occurred the week after on February 12th.

21. Dr. Fisch told Patient B that he was going to "run things through his wife", although Patient B did not know what he meant by that.

22. Patient B's wife accompanied him to one treatment session in 1992. That was the only occasion that Patient B's wife ever met or saw Dr. Fisch.

23. Dr. Fisch billed Bay State Health Care for ten office visits with Patient B's wife in 1992; March 25, 1992, March 30, 1992, April 8, 1992, April 22, 1992, May 6, 1992, May 20, 1992, June 3, 1992, June 10, 1992, June 26, 1992 and June 29, 1992, when he did not see nor treat Patient B's wife..

24. Dr. Fisch's treatment records for Patient B and his wife are written in pencil.

FACTS RELATING TO PATIENT C AND HER HUSBAND

25. Patient C saw Dr. Fisch between November 1991 and February 1992. She saw Dr. Fisch on November 7, 1991, November 12, 1991, November 18, 1991, December 1, 1991, December 3, 1991, December 17, 1991, December 19, 1991, December 21, 1991, December 23, 1991, January 7, 1992, January 28, 1992, February 10, 1992 and February 11, 1992. Patient C did not see Dr. Fisch after February 11, 1992. Dr. Fisch billed and was paid for these visits by Patient C's health insurer, Bay State Health Care.

26. The Board's investigator contacted Patient C regarding Dr. Fisch during the summer of 1998.

27. Prior to being contacted by the Board's investigator, neither Patient C nor Patient C's husband was aware of any billing issues or discrepancies with Respondent.

28. Dr. Fisch billed Bay State Health Care for eight therapy sessions for Patient C in 1992: February 19, 1992, February 25, 1992, March 3, 1992, March 17, 1992, March 31, 1992, April 16, 1992, May 1, 1992 and May 26, 1992, when he did not see nor did he treat Patient C.

29. Information contained in Dr. Fisch's treatment records of Patient C was not and could not have been conveyed to Dr. Fisch on the dates recorded. The records suggest that in February and March 1992 Dr. Fisch and Patient C were discussing a proposed reunion with her estranged father in Florida. Patient C and her father had reconciled prior to that time and her father was in California. Further, from February 18 - 20, 1992, Patient C was on a skiing trip at Gunstock Ski Area in New Hampshire.

30. Patient C's husband saw Dr. Fisch individually on February 3, 1992 and February 10, 1992. Dr. Fisch billed and was paid for these visits by Patient C's health insurer.

31. Dr. Fisch billed Bay State Health Care for fifteen office visits with Patient C's husband in 1992: February 19, 1992, February 27, 1992, March 2, 1992, March 16, 1992, March 27, 1992, April 6, 1992, April 17, 1992, April 20, 1992, May 11, 1992, May 18, 1992, May 29, 1992, June 1, 1992, June 8, 1992, June 29, 1992 and July 6, 1992, when he did not see nor treat Patient C's husband.

32. Information contained in Dr. Fisch's treatment records of Patient C's husband was inaccurate. Respondent's records indicate that he treated Patient C's husband on June 8, 1992. Patient C's husband was on active duty with the military at Fort Drum, New York from June 5 to June 19, 1992.

33. Dr. Fisch's treatment records for Patient C and her husband were written in pencil.

FACTS RELATING TO PATIENT D AND PATIENT D'S HUSBAND

Patient D and her husband refused to testify. No evidence of their treatment with Dr. Fisch was introduced.

FACTS RELATING TO DR. FISCH'S BILLING PRACTICES

34. Between June 1991 and June 1993, Barbara Gudinas did the billing for all of Dr. Fisch's offices. She was the sole billing service used by Dr. Fisch during that time period. Ms. Gudinas had more than twenty years of experience in patient billing.

35. In June 1991, Dr. Fisch gave Ms. Gudinas four handwritten sheets of paper with notations concerning patients and billing instructions. Ms. Gudinas then created her own posting sheets for Dr. Fisch. She took Dr. Fisch's patient records to her home, entered the appropriate data into her computer, and then returned them to him.

36. When she worked for Dr. Fisch, Ms. Gudinas would print out weekly posting sheets for him that contained the names of his patients, their account numbers and their insurance carriers. Dr. Fisch would fill in the dates of treatment for the patients involved. In addition to this, Dr. Fisch would provide Ms. Gudinas with explanations of benefit forms so that she could keep track of when he had received payments from insurance companies.

37. Ms. Gudinas billed Dr. Fisch's patients for a co-payment unless Dr. Fisch indicated on the posting sheet that the co-payment had been paid at the time of the visit. Dr. Fisch would write NBB next to the patient's name if he did not want Ms. Gudinas to bill the patient for a co-payment.

38. In the beginning of Ms. Gudinas' employment, Dr. Fisch delivered the completed posting sheets to her at Dr. Rosenberg's office. Ms. Gudinas worked for Dr. Rosenberg and he had referred Dr. Fisch to Ms. Gudinas. After Dr. Rosenberg objected to Dr. Fisch dropping off the posting sheets at his office, Ms. Gudinas started to pick them up and drop them off at Dr. Fisch's home in Brookline. She and a friend would usually stop by Dr. Fisch's house while shopping on Sundays.

39. Dr. Fisch did not transmit dates of treatment to Ms. Gudinas over the telephone. Ms. Gudinas or her son picked up the posting sheets. A formal carrier never transported them. Ms. Gudinas never broke her leg.

40. Ms. Gudinas billed Bay State Health Care for all of the office visits with Patient A and his wife, Patient B and his wife and Patient C and her husband from the information contained on the completed posting sheets given to her by Dr. Fisch.

FACTS RELATING TO BAY STATE HEALTH CARE'S
INVESTIGATION OF PATIENT A'S COMPLAINT

41. In May of 1993, Michael Chapin, a customer services representative at Bay State Health Care, contacted Dr. Fisch's office regarding Patient A's billing dispute. He spoke to Dr. Fisch's secretary at the time, Linda Clement. Ms. Clement then told Dr. Fisch about the call. Dr. Fisch asked Ms. Clement to call Patient A's wife and get the disputed dates.

42. Ms. Clement contacted Patient A's wife. After Patient A's wife gave her a list of disputed visits, Ms. Clement told her that she would get to the bottom of it.

43. Ms. Clement informed Dr. Fisch of the disputed dates. Dr. Fisch never provided Ms. Clement with any records to assist her in resolving the billing dispute.

44. Sometime in July of 1993, Patient A's wife again spoke to Linda Clement. Ms. Clement told her that an outside service had done the billing.

45. On July 28, 1993, the matter still not resolved, Patient A's wife wrote a letter of complaint to Michael Chapin. Michael Chapin reviewed Bay State Health Care's records and determined that Dr. Fisch had submitted bills for Patient A and his wife on the disputed dates.

46. During the summer of 1993, Dr. Fisch reimbursed Bay State Health Care for eight office visits attributed to Patient A.

47. Mr. Chapin referred the matter to Bay State's Appeal and Grievance Department, because it had taken all summer to partially resolve the problem.

48. Dr. Fisch was never disciplined by Bay State Health Care.

49. Bay State Health Care never referred the matter to a review panel.

FACTS RELATING TO THE INVESTIGATION BY THE
BOARD OF REGISTRATION IN MEDICINE

50. During the Board's investigation of Dr. Fisch, the matter was handled by three investigators: Kenneth Berg, Stephen Giacobbe and Michael Mozzer. Each of these investigators requested and received written responses from Dr. Fisch as to the allegations of fraudulent billing.

51. In March of 1996, Dr. Fisch told Stephen Giacobbe in a letter that the error occurred because the information was transmitted by telephone and that there was another patient with a similar name who had been confused with Patient A's wife.

52. In April of 1997, Dr. Fisch told Michael Mozzer that he generally wrote the dates of treatment on the posting sheets and a courier transmitted them. He said that the

error with Patient A occurred because Ms. Gudinas broken her leg and information had to be transmitted to her over the phone for a period of three months.

CONCLUSION AND RECOMMENDATION

The preponderance of the evidence establishes that Dr. Fisch billed an insurance carrier for psychotherapy sessions with patients that did not occur. In all three instances, Dr. Fisch was treating a patient and then asked to see that patient's spouse. After seeing the spouse once or twice and obtaining referrals from their primary care physicians, Dr. Fisch proceeded to bill the insurance carrier for treatments to that spouse that did not occur. Likewise, he continued to bill the insurance carrier for treatments to the patients that did not occur and after the patients terminated their treatment with Dr. Fisch.

Bay State Health Care first questioned Dr. Fisch's billing practices when Patient A's wife indicated that she and her husband had not attended psychotherapy sessions that Bay State was billed for. After much consternation, Dr. Fisch admitted to having not seen Patient A and his wife on the dates in question. When asked to produce his records on the patients, he stated that they were lost. When questioned on the erroneous billing, he claimed that treatment dates were transmitted over the telephone, when they were not. Dr. Fisch claimed that some of the errors were attributable to Ms. Guidinas breaking her leg, which she did not. Dr. Fisch's final explanation is that two similar names were confused, which led to the faulty billing of Patient A's wife seven times. Though the two names contain the same initials, it is not plausible that this similarity caused seven separate billing errors.

Dr. Fisch also blamed his billing service, Barbara Gudinas, for the mistakes. He claimed that he read treatment dates to her over the telephone, which she denied in her

testimony. Dr. Fisch claimed that he used a courier to deliver treatment dates to Ms. Gudinas, which she denied in her testimony. Dr. Fisch also claimed that Ms. Gudinas broke her leg, which forced him to transmit the dates over the telephone. Ms. Gudinas never broke her leg. I observed Barbara Gudinas to be a credible witness with no apparent reason or motive to be untruthful in her testimony.

On the one occasion Patient A's wife attended a therapy session with Dr. Fisch, Dr. Fisch told her that he was going to bill her and her husband for two separate sessions, though they attended one joint session. After Patient A's wife told him that this would be "double billing", he said to her that Baystate did not pay real well.

Linda Clement testified to not being allowed to see Dr. Fisch's appointment books or patient records. Dr. Fisch claims that Ms. Clement had Patient A's records when they were lost, but Ms. Clement never had the records. Ms. Clement testified to one occasion where Dr. Fisch stood over her while she spoke with Michael Chapin on the telephone and told her to tell him that the Patient A mistake was the fault of the billing service. Despite Dr. Fisch's claims, Linda Clement said that she never communicated any treatment dates to Barbara Gudinas over the telephone or by any method.

Linda Clement testified to Dr. Fisch having complained about the limitations on reimbursement from insurance companies. Dr. Fisch told Ms. Clement that he "upcoded" or charged for more expensive services to make up for it. This is consistent with what Patient A's wife testified to regarding Dr. Fisch's attempt at "double billing". I observed Linda Clement to be a credible witness with no apparent reason or motive to be untruthful in her testimony.

Dr. Fisch blames the Patient A billing mistake on Barbara Gudinas and his various secretaries, saying that it was them who wrote the treatment dates on the posting sheets. At the hearing, Dr. Fisch would neither affirm nor deny that he had written treatment dates on the posting sheets.

Nancy McCann, the Board's expert document examiner, testified that the author of some of the treatment dates was Dr. Fisch. Ms. McCann studied the actual posting sheets and used a microscope to aid in her examination. Ms. McCann's analyzed size, shaping and the slant of the characters, as well as the unconscious habits of the author in reaching her opinion.

Though Dr. Fisch claims that he did in fact see Patient B and his wife on all the dates Bay State Health Care was billed for, a preponderance of the evidence suggests otherwise. The dates in question are inconsistent with Patient B's memory and his lawyer's diary, which contains most of his appointments. In fact, his diary shows that he had other appointments scheduled on some of the dates that Dr. Fisch alleges they met. Patient B indicated in his testimony that he was having financial difficulty at the time and that he and Dr. Fisch planned their meetings so that he would not exceed the treatment amounts covered by Bay State Health Care.

Much of what was written in Dr. Fisch's records about patient B was accurate, but would not have been communicated to Dr. Fisch on the recorded dates. Patient B's mention of his father on his birthday would have occurred on November 15, 1991, not on November 11, 1991, as Dr. Fisch's records indicate. Also, Dr. Fisch's records dated February 7, 1992 contain a mention of Patient B's anniversary occurring the preceding week, when in fact it did not occur until the following week on February 12, 1992. These

records suggest that information communicated from patient B to Dr. Fisch in a few sessions, was represented in Dr. Fisch's records in many sessions, over a longer period of time.

In his testimony, Patient B was very cautious when indicating which sessions he did not attend and did not want to say he was not there unless he was 95% certain. Patient B's wife only saw Dr. Fisch once, but her insurance carrier was billed for ten visits. Though he did not know what Dr. Fisch meant at the time, Patient B recalled Dr. Fisch telling him that he was going to "run things through his wife". I observed Patient B to be a credible witness with no apparent reason or motive to be untruthful in his testimony.

Dr. Fisch's patient records are also inconsistent with Patient C and her husband's memories of what occurred at that time. Patient C testified to writing a check for a copayment every time she saw Dr. Fisch, but she does not have cancelled checks for many of Dr. Fisch's alleged psychotherapy sessions. Patient C and her husband were away at a ski resort in New Hampshire between February 18 and 20, 1992, during which time Dr. Fisch alleges that a psychotherapy occurred with patient C. Patient C has documented proof of the ski trip in the form of a VISA bill. Patient C's husband was fulfilling an active duty requirement in Fort Drum, New York from June 5 to June 19, 1992, during which time another of Dr. Fisch's alleged sessions occurred. This is also documented in the form of a military pay stub and a VISA bill. It is not possible that Patient C or her husband attended these sessions.

The information in Dr. Fisch's patient records for Patient C and her husband was also accurate, but inconsistent with the time frame in which the event occurred. In

February and March of 1992, Dr. Fisch indicated in his patient records that Patient C was contemplating a reunion with her estranged father in Florida. In reality, Patient C had reunited with her father before that time and her father was living in California in 1992, not Florida. Again, Dr. Fisch's records suggest that information conveyed to Dr. Fisch in a few sessions was represented in many sessions, over a longer period of time. In her testimony, Patient C gave Dr. Fisch the benefit of the doubt when she could in regard to which treatment dates she attended, but Dr. Fisch never addressed the inconsistencies between his records and the witness's testimony. I observed Patient C to be a credible witness with no apparent motive to be untruthful in her testimony.

In response to allegations of fraudulent billing, Dr. Fisch offers a variety of excuses. In Patient A's case, he admits to a billing mistake. He places the blame on his billing service and his secretaries. In Patient B and C's case, he suggests that they have merely forgotten that they attended the psychotherapy sessions. However, Dr. Fisch did not offer any evidence to advance any of these explanations. Moreover, a clear pattern forms when the three groups of patients are looked at together. Dr. Fisch saw each patient individually and then asked to meet that patient's spouse. After a single meeting with the patient's spouse, Dr. Fisch proceeded to charge their insurance company for an amount of visits that approached, but did not exceed what would be covered. There are simply too many errors to ascribe them to mistake or memory lapse.

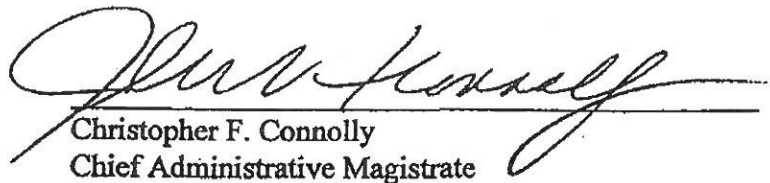
I conclude that Dr. Fisch's behavior as found does not call into question his ability or competency to practice medicine. However, Dr. Fisch's behavior does undermine the public confidence in the integrity of the profession. I recommend to the Board that it impose an appropriate sanction against Dr. Fisch.

In so far as no evidence was offered relative to Patient D and her husband, I recommend that those allegations be dismissed.

There are a number of mitigating circumstances which the Board should take into account when imposing a sanction. Eight years have passed since the events in question occurred. Dr. Fisch has had no other patient complaints in the years that have passed since these events occurred. There are no quality of care issues involved. Dr. Fisch has never been disciplined by Bay State Health Care or any other insurance provider. No criminal charges have ever been brought against Dr. Fisch by an insurance company or any patient. Patients A, B, C and their spouses were not negatively affected by the erroneous billing and they never had to pay any out-of-pocket costs.

I submit this matter to the Board for the imposition of an appropriate sanction against Dr. Fisch.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Christopher F. Connolly
Chief Administrative Magistrate

Dated: June 30, 2000