



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC May 10, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Theodore J. Sabot, M.D.
23 Walden Lane
Pittsfield, Massachusetts 01201

Theodore J. Sabot, M.D.
29 Jones Avenue
Chatham, New York 01237

Robert Bogan, Esq.
Associate Counsel
NYS Department of Health
Office of Professional medical Conduct
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Theodore J. Sabot, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-101) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh
Enclosure

COPY

IN THE MATTER
OF
THEODORE J. SABOT, M.D.

DETERMINATION

AND

ORDER

BPMC NO. 04-101

A Commissioner's Order and Notice of hearing, dated December 15, 2003, and a Statement of Charges, dated the same date, were served upon the Respondent, **THEODORE J. SABOT, M.D.** **JOEL H. PAULL, D.D.S., M.D.**, Chairperson, **SHELDON H. PUTTERMANN, M.D.** and **MS. FRANCES TARLTON**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on April 21, 2004, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person.

Evidence was received and witnesses sworn and heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Answer Filed	Waived by Department (Ex. 7)
Pre-Hearing Conference	April 21, 2004
Witnesses for Petitioner	None
Witnesses for Respondent	Theodore J. Sabot, M.D. Ralph Carotenuto, M.D. (by telephone)
Hearing Date	April 21, 2004
Deliberation Date	April 21, 2004

STATEMENT OF CASE

The State Board for Professional Misconduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq of the Public Health Law of the State of New York [hereinafter P.H.L.]).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the P.H.L. Theodore J. Sabot, M.D. ("Respondent") was, first of all, the subject of a Commissioner's Order suspending him from the practice of medicine pending a hearing, pursuant to Public Health Law §230(12)(b), based upon his conviction of a felony under Federal law. In addition, Respondent is charged with three specifications of professional misconduct, as defined in §6350 of the Education Law of the State of New York ("Education Law"). Specifically, Respondent is charged with one specification of conviction of a federal crime (subdivision (9)(a)(ii)), one specification of practicing the profession fraudulently (subdivision (2)) and one specification of conduct evincing moral unfitness for the practice of medicine (subdivision (20)).

The fraudulent practice and moral unfitness charges concern, in part, a false answer Respondent made on an application for employment with the Rensselaer County Civil Service Commission. A copy of the Statement of Charges is attached to this Determination and order as Appendix I.

Respondent, although admitting that the answer he made on the application for employment with the Rensselaer County Civil Service Commission was false, denies intentionally answering falsely.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("Tr."), as well as to the related factual allegations from the Statement of Charges. These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding.

Having heard testimony and considered documentary evidence presented by the Petitioner and Respondent, respectively, the Hearing Committee hereby makes the following findings of fact:

1. **THEODORE J. SABOT**, the Respondent, was authorized to practice medicine in New York State on July 15, 1963, by the issuance of license number 90505 by the New York State Education Department, and has a current registration address of 29 Walden Lane, Pittsfield, MA 01201 (Ex. 4). Respondent is board certified in psychiatry (Respondent's Ex. 4).

2. On or about January 18, 1985, Respondent was convicted upon a plea of guilty in the California Superior Court of Penal Code violations relating to his submission of false claims with a value in excess of \$400,000 to the Medi-Cal program. This conviction led initially to the revocation of his New York license to practice medicine, then to the staying of the revocation on November 21, 1990 by the Board of Regents, with the imposition of one year's probation (Ex. 5; Factual allegation A).
3. On November 1, 1994, Respondent filled out an application for examination or employment with the Rensselaer County Civil Service Commission in which he falsely answered "No" to the question "have you ever been convicted of any crime (felony or misdemeanor)?". However, Respondent's false answer to this question was unintentional, and he subsequently filled out another application, answering the question correctly, and filed an explanation regarding the conviction. The information about Respondent's conviction did not affect his employment (Ex. 9, Respondent's testimony; Factual allegation B).
4. On January 24, 2003, Respondent was convicted, pursuant to a guilty plea, of one count of the Federal crime of Health Care Fraud for "knowingly and willfully" executing a "scheme and artifice to defraud Medicare" by causing the Rensselaer County (New York) Mental Health Department to submit claims for services he furnished, when he was suspended from participation in the Medicare program at the time. Respondent was sentenced to 4 months imprisonment, 3 years supervised release, including 4 months in home detention, a \$5,000 fine, a \$100 assessment and restitution of \$2,211.33 (Ex. 6; Factual allegation C).

DISCUSSION

Respondent is charged with three specifications alleging professional misconduct within the meaning of Education Law §6530. It is noted at the outset that the first and third specifications make reference to Respondent's 1985 criminal conviction (factual allegation A) as a basis for discipline. However, Respondent has already been disciplined for this conviction, and he cannot be disciplined again for the same misconduct. Accordingly, the Hearing Committee disregards the references to these factual allegations in its determination of the validity of these specifications, although the prior conviction is pertinent to the penalty to be assessed in this case (see below).

Factual allegation B deals with Respondent's November 1, 1994 employment application with the Rensselaer County Civil Service Department. Respondent testified that his initial incorrect answer on the application was an oversight that he corrected thereafter by properly answering the question regarding past criminal convictions on another application, and providing an explanation. The Hearing Committee, given the circumstances, is inclined to give Respondent the benefit of the doubt and to conclude that his initial erroneous answer was not intentional or fraudulent. Given this conclusion, coupled with the fact that the prior criminal conviction cannot again be the basis for discipline, the Hearing Committee concludes that the first and third specifications (which deal only with factual allegations A and B) should be dismissed.

Factual allegation C, dealing with Respondent's 2003 Federal criminal conviction, must be sustained, because the conviction is binding on this tribunal, and constitutes misconduct per se pursuant to Education Law §6530(9)(a)(ii). Respondent's attempts in his testimony and evidentiary offers to deny personal responsibility for the acts leading to the conviction cannot be considered, because he pled guilty to "knowingly and willfully"

executing a "scheme and artifice to defraud Medicare".

CONCLUSIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently.

VOTE: NOT SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by having been convicted of a crime under Federal law.

VOTE: SUSTAINED (3-0)

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(20) by engaging in conduct in the practice of medicine that evidences moral unfitness to practice medicine.

VOTE: NOT SUSTAINED (3-0)

DETERMINATION AS TO PENALTY

The Hearing Committee's concludes that a significant penalty should be meted out in response to Respondent's 2003 Federal criminal conviction, especially since this is not his first criminal conviction related to medical billing. However, the Hearing Committee does not feel that revocation or suspension of Respondent's license is called for, given the testimonials presented on Respondent's behalf as to his abilities, past job performance, and commitment to providing care for underserved elements of the population (Respondent's Ex. 4; Respondent's testimony; testimony of Ralph Carotenuto, M.D.). The aim of the Hearing Committee is to fashion a penalty that will serve as a deterrent and

punish Respondent for his misconduct, and prevent him from engaging in further billing irregularities, while at the same time allowing him to continue to practice in a supervised setting.

Accordingly, the Hearing Committee imposes a censure and reprimand against Respondent's New York medical license. In addition, a ten-year period of probation is imposed that includes restrictions on the type of practice Respondent may engage in. The details of this probation are set forth in the attached Order.

ORDER


IT IS HEREBY ORDERED THAT:

1. A **CENSURE AND REPRIMAND** is hereby imposed against Respondent's New York medical license.
2. Respondent will serve a term of **PROBATION** of **TEN (10) YEARS**. The specific details regarding this probation are as follows:
 - A. Respondent shall work only in a supervised setting, such as a facility operated or licensed by New York State, where Respondent will not be doing his own billing and where close oversight of the information he provides for billing will be available. This setting must be one that provides services to an underserved population. Respondent shall not practice in New York unless and until he provides notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299, of any proposed practice setting, and that setting is approved in writing by the Director of OPMC.
 - B. Respondent shall provide the supervisor or administrator in any practice setting with a copy of this Order and terms of probation; and shall cause the Supervisor or administrator to acknowledge receipt of such notification in writing and to agree submit reports regarding Respondent's performance quarterly, or as requested by OPMC.
 - C. Respondent shall submit semi-annually a signed compliance declaration to the Director of OPMC that truthfully attests whether he has been in compliance with the supervised employment setting requirement.
 - D. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
 - E. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

- F. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- G. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
- H. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
- I. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
- J. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

This ORDER shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Eggertsville, New York
5/7/04, 2004



JOEL H. PAULL, D.D.S., M.D.
Chairperson

SHELDON H. PUTTERMANN, M.D.
MS. FRANCES TARLTON

APPENDIX 1

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

IN THE MATTER
OF
THEODORE J. SABOT, M.D.
CO-03-08-3633-A

STATEMENT
OF
CHARGES

THEODORE J. SABOT, M.D., the Respondent, was authorized to practice medicine in New York state on June 19, 1963 to February 16, 1988, and from December 3, 1990 to present, by the issuance of license number 090505 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 18, 1985, in the Superior Court, Department No. 1, County of Sacramento, California, Respondent was found guilty, based on a plea of guilty, of a violation of section 487(1) and 12022.6(b) of the California Penal Code, a felony, in that on or about and between August 1, 1981 and May 29, 1984, while residing in New York, he submitted in excess three thousand (3,000) claims for approximately \$400,000.00, to the California Medi-Call (Medicaid) Program for psychiatric services that were not rendered and on or about May 15, 1985, was sentenced to five (5) years prison, a \$5,000.00 fine, and a \$3,500.00 penalty.

B. On or about November 1, 1994, Respondent falsely prepared by and submitted to the Rensselaer County Civil Service Commissioner, an Application for Examination or Employment, wherein he falsely answered "No" to question "7. CHECK APPROPRIATE BOX TO THE RIGHT OF EACH QUESTION. D. Have you ever been convicted of any crime (felony or misdemeanor)?"

C. On or about January 24, 2003, in the United States District Court for the Northern District of New York, Respondent was found guilty, based on a plea of guilty, of Health Care Fraud, in violation of Title 18, U.S.C. §1347 and 2, a felony, and was sentenced to four (4) months imprisonment, three (3) years probation after release from imprisonment to include four (4) months Home Detention, \$2,211.33 restitution, a \$5,000.00 fine, and a \$100.00 assessment.

SPECIFICATIONS

FIRST SPECIFICATION

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

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

SECOND SPECIFICATION

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


2. The facts in Paragraph C.

THIRD SPECIFICATION

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

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

DATED: *December 12*, 2003
Albany, New York


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