



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**

June 14, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Stevens L. Ingraham, Esq.  
Harris Beach LLP  
99 Garnsey Road  
Pittsford, New York 14534

Clifford Robert Jacobson, M.D.  
5261 West Lake Road  
Rochester, New York 14454

Clifford Robert Jacobson, M.D.  
1655 Elmwood Avenue  
Suite 230  
Rochester, New York 14620

**RE: In the Matter of Clifford Robert Jacobson, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-195) 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.

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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.

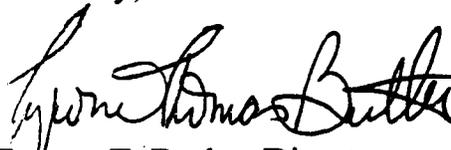
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

IN THE MATTER  
OF  
**CLIFFORD ROBERT JACOBSON, M.D.**

DETERMINATION

AND

ORDER

BPMC #02-195

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated March 28, 2002, were served upon the Respondent, **CLIFFORD ROBERT JACOBSON, M.D.**. **FRED LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **MR. JOHN D. TORRANT**, 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 May 23, 2002, 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 and by **STEVENS L. INGRAHAM, ESQ.**

Evidence was received and transcripts of these proceedings were made.

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

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where 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 or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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)(a)(ii) based upon his conviction of a crime under Federal law. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

**WITNESSES**

For the Petitioner:	None
For the Respondent:	Samuel L. Kent, M.D. Respondent

## 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 unless otherwise specified.

1. **CLIFFORD ROBERT JACOBSON, M.D.**, the Respondent, was authorized to practice medicine in New York State on September 15, 1978, by the issuance of license number 135796 by the New York State Education Department (Ex. 4).
2. On January 18, 2002, in the United States District Court, Western District of New York, Respondent was sentenced to six (6) months' home confinement, five (5) years probation, a \$50,000.00 fine, 250 hours of community service for each year he is on probation, restitution in the amount of \$786,585.72, and a \$100.00 assessment based upon a plea of guilty of a violation of 18 U.S.C. §1341, Mail Fraud, a felony (Ex. 5).

## **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the Respondent's conviction of a crime under Federal Law constitutes Professional Misconduct pursuant to New York Education Law §6530(9)(a)(ii).

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

#### **SPECIFICATION**

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

**VOTE: SUSTAINED (3-0)**

### **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that on January 18, 2002, in the United States District Court, Western District of New York, Respondent was sentenced to six (6) months' home confinement, five (5) years probation, a \$50,000.00 fine, 250 hours of community service for each year he is on probation, restitution in the amount of \$786,585.72, and a \$100.00 assessment based upon a plea of guilty of a violation of 18 U.S.C. §1341, Mail Fraud, a felony (Ex. 5). The Felony Information to which Respondent pleaded guilty accused Respondent of devising a scheme and artifice for obtaining money and property from Medicare, Medicaid and private health insurers by means of false and fraudulent pretenses and representations, including submitting claims for payment for procedures he did not perform or inflating the amount of time he spent with patients, and of obtaining

monies to which he was not entitled as a result, during the period January 1, 1994 through January 31, 2000.

The serious and extensive nature of the criminal undertaking at issue is evidenced by the time period covered by the offense, the severity of the sentence and the amount of restitution required. The Hearing Committee believes that a significant penalty is called for in response to the misconduct covered by the criminal conviction.

However, several factors led the Hearing Committee to the conclusion that revocation of Respondent's license is not appropriate in this instance. First, the Hearing Committee is cognizant of the fact that Respondent has already paid an extremely heavy price for the acts that led to the criminal conviction, including the stigma of the conviction itself, the home confinement, the stiff financial penalty and restitution, and the automatic loss of the right to bill federal programs for his services and the resulting adverse impact upon his employment at the V.A. Hospital.

Furthermore, the Hearing Committee was favorably impressed by the extensive array of glowing testimonials from colleagues, other health care professionals and supervisors regarding the Respondent's willingness to treat even the most difficult patients, regardless of their ability to pay, the high quality of care and concern he provides those patients, and the community service he has performed (Ex.'s D, E and G). The Hearing Committee is of the opinion that Respondent has positive qualities and abilities that can be put to the public good if Respondent is allowed to continue to practice in an environment where he is not directly responsible for his own billings, and where the billings resulting from the care he provides will be monitored. In addition, the fact that no patient harm was involved, either medical or financial, is of some relevance to the issue of whether Respondent should be allowed to continue to practice medicine.

Respondent presented evidence to show that he is afflicted with bipolar disorder, or recurrent major depression with hypomanic features (Ex. B and C, testimony of Samuel L. Kent, M.D., Respondent's testimony). The gist of Respondent's argument with regard to his psychiatric condition is that his overbilling was a compulsive result of this condition, and that this should be taken into account in meting out a penalty in this case. However, Respondent's psychiatric condition is of less significance in determining the penalty in this case than the factors mentioned above. It is the Hearing Committee's assessment that Respondent knew that the billings at issue, made over a long period of time, were fraudulent, and it is somewhat difficult to believe that they were entirely the product of uncontrollable compulsion. In any event, to the extent, if any, that Respondent is entitled to mitigation of a penalty because of this condition, he has already received sufficient mitigation in the Federal Court's downward departure from the standard sentencing guidelines (Ex. 5).

Respondent also attempted to convince the Hearing Committee that the billing violations were not as serious as they sound from the criminal court documentation and that the actual amounts of overpayments he received were less than the restitution ordered by the court. Consideration of these claims is precluded by the statutory limitation on the scope of this proceeding. Pursuant to Public Health Law §230(10)(p), the issues that can be considered in this proceeding are strictly limited to those relating to the nature and severity of the penalty. The criminal court findings as to the nature and extent of the criminal violations are binding on this tribunal, and those findings speak for themselves. For the same reason, this decision will not address further the evidence presented by the Department in an attempt to refute Respondent's testimony on these points.

The Hearing Committee concludes that the appropriate penalty in this case is a three-year suspension of Respondent's medical license, with the suspension stayed for so long as Respondent is fully compliant with the terms of the probation set forth below. It is the Hearing Committee's belief that the probationary terms will adequately protect the public from any repetition of behavior of the sort that led to the criminal conviction.

It is noted that any evidence adduced at the hearing and not discussed specifically herein was determined by the Hearing Committee to be irrelevant to the charges, repetitious, and/or lacking in probative value.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. The medical license of **CLIFFORD ROBERT JACOBSON, M.D.** is **SUSPENDED** for a period of **THREE (3) YEARS**. The suspension is **STAYED** for so long as Respondent is fully compliant with the terms of probation detailed below.
2. Respondent is hereby placed on **PROBATION** for a period of **FIVE (5) YEARS**.
3. The terms of Respondent's probation are as follows:
  - A). Respondent's probation will be monitored by the New York State Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street, Troy, New York 12180-2299.
  - B). During the period of his probation, Respondent shall not engage in the private practice of medicine.
  - C). Respondent shall have quarterly meetings with a monitoring physician who shall review randomly selected medical records, primarily to evaluate whether Respondent's medical documentation supports the billing documents for the care he has provided. This monitoring physician shall be selected by Respondent and is subject to the approval of the Director of the Office of Professional Medical Conduct. Respondent shall not provide any medical care for which reimbursement will be sought from any public or insuring entity until an acceptable monitoring physician is approved by the Director. The monitoring physician shall maintain documentation of his reviews, to be made available to OPMC upon request.
  - D). Respondent shall notify in writing any group, clinic or medical facility with whom he becomes affiliated or at which he practices during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.
  - E). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which he is affiliated or at which

he practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired physicians. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his 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.

- F). Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice, professional and residential addresses or 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 during the probationary period, within 30 days of each event;
- G). Respondent shall notify the Director of OPMC, in writing, if he ceases to be 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 again notify the Director prior to any change in that status. Respondent's probation shall be tolled while Respondent is not practicing in New York State during such period and shall resume upon his return to practice in New York State.
- H). 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. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- I). Respondent shall comply with all terms, conditions, and restrictions to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance.
- J). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.
- K). OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation, or any individual provision(s) thereof, if it is satisfied that such relief would not be contrary to the best interests of New York State residents.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**DATED: Middletown, New York**

*[Handwritten signature]*  
**June 12, 2002**

*[Handwritten signature]*  
**FRED LEVINSON, M.D.**  
**Chairperson**

**ERNST A. KOPP, M.D.**  
**MR. JOHN D. TORRANT**

# APPENDIX 1

EXHIBIT  
1  
EV  
5/23/02

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

IN THE MATTER  
OF  
CLIFFORD ROBERT JACOBSON, M.D.  
CO-01-08-4332-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: CLIFFORD ROBERT JACOBSON, M.D.  
5261 West Lake Road  
Rochester, NY 14454

CLIFFORD ROBERT JACOBSON, M.D.  
1655 Elmwood Avenue  
Suite 230  
Rochester, NY 14620

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. 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 23<sup>rd</sup> day of May 2002, 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. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 3, 2002.

Pursuant to the provisions of N.Y. 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 May 3, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION  
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR  
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN  
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
*March 28*, 2002



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

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IN THE MATTER  
OF  
CLIFFORD ROBERT JACOBSON, M.D.  
CO-01-08-4332-A

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STATEMENT  
OF  
CHARGES

CLIFFORD ROBERT JACOBSON, M.D., the Respondent, was authorized to practice medicine in New York state on September 15, 1978, by the issuance of license number 135796 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On January 18, 2002, in the United States District Court, Western District of New York, Respondent was found guilty, based on a plea of guilty, of a violation of 18 U.S.C. §1341, <sup>mail</sup> Medicare Fraud, a felony, and was sentenced to six (6) months home confinement, five (5) years probation, a \$50,000.00 fine, 250 hours of community service each year he is on probation, restitution in the amount of \$786,585.72, and a \$100.00 assessment.

**SPECIFICATION**

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

1. The facts in paragraph A.

DATED: *March 28*, 2002  
Albany, New York

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