

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

July 6, 1990

Eui Don Joo, Physician
29 Tip Top Way
Berkeley Heights, N.J. 07922

Re: License No. 123740

Dear Dr. Joo:

Enclosed please find Commissioner's Order No. 10711. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

MOIRA A. DORAN
Supervisor

DJK/MAH/er
Enclosures

CERTIFIED MAIL- RRR

cc:

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

EUI DON JOO

CALENDAR NO. 10711



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

EUI DON JOO

No. 10711

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

EUI DON JOO, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On March 28, 1990, respondent appeared before us in person and elected to proceed without an attorney. Daniel Guentzburger, Esq., represented the Department of Health.

Petitioner's recommendation as to the penalty to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be suspended for three years, and said suspension be stayed and run concurrently with the New Jersey sanction.

Respondent did not make a written recommendation as to the penalty to be imposed, should he be found guilty, but informed us

orally of his recommendation that no further action be taken against respondent.

Petitioner's motion to amend the second specification of the charges was granted at our March 28, 1990 meeting. Accordingly, on page three of the statement of charges, respondent was alleged to have violated N.J. Stat. Section 45:1-21(f) rather than Section 45:1-24(f).

A prior proceeding against respondent, under Cal. No. 10156, was dismissed without prejudice in light of petitioner's choosing not to submit necessary and material proof, including the New Jersey statutes claimed to be the equivalent of applicable New York law. In this matter, petitioner has submitted these statutes as well as other documentation.

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. On May 31, 1985, respondent entered a plea of guilty in the New Jersey Superior Court, Union County, to six counts of the 18 count indictment. On July 8, 1985 respondent was sentenced upon his conviction of six counts of the crime of Medicaid Fraud pursuant to N.J.S.A. 30-4D-17.
3. The acts constituting Medicaid Fraud in New Jersey would, if committed by respondent in New York State, have constituted the crime under New York law of Medicaid Fraudulent Practices

pursuant to Social Services Law §366-b(2) as set forth in the statement of charges and the record herein.

4. On February 28, 1986, the New Jersey Board of Medical Examiners found respondent guilty in violation of N.J.S.A. 45:1-21(f) based upon the conviction referred to in finding two of this report.
5. Petitioner alleges that the conduct upon which respondent was found guilty by the duly authorized professional disciplinary agency of another state would, if committed in New York State, constitute professional misconduct under Education Law §6509(5)(b).

DETERMINATION AS TO GUILT

The first specification of the charges contained in the statement of charges, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven, by a preponderance of the evidence, and respondent is guilty thereof.

Upon our inquiry, petitioner's attorney informed us that New York Social Services Law §366-b(2) is comparable to the New Jersey statute upon which respondent was convicted. According to petitioner, these statutes are comparable based on the similar language in each regarding the provider receiving greater Medicaid payments than he was entitled to receive.

Both New Jersey's and New York's applicable criminal statutes include several bases for a conviction of Medicaid fraud. The operative clause in N.J.S.A. 30-4D-17 is "any provider who willfully receives medical assistance payments to which he is not entitled or in a greater amount than that to which he is entitled is guilty": the operative clause in Social Services Law §366-b(2) is "any person who...knowingly submits false information for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services or merchandise". In our unanimous opinion, these similar statutes are comparable for the purpose of establishing respondent's guilt under Education Law §6509(5)(a)(iii). The essential elements of a provider obtaining greater compensation than that to which he is entitled on the basis of a knowing submission of false information are provided in each statute.

We are mindful of the different terminology in the New Jersey statute and its New York analogue. The "person" referred to under Social Services Law §366-b(2) who receives compensation for furnishing services is clearly a provider of services under New Jersey Law. Also, although New York law refers to the submission of the claim and New Jersey refers to the receipt of payments, all the elements required under New York law were satisfied by the adjudication under New Jersey law. In New Jersey, respondent was convicted for knowingly and willfully receiving Medicaid payments

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to which he was not entitled as a result of knowingly and willfully filing and causing to be filed false information seeking Medicaid payments. Thus, the conviction in New Jersey may be equated with the elements under New York law regarding the knowing submission of false information seeking Medicaid payments, which submission must have occurred prior to the receipt of payments. In our unanimous opinion, the New York requirement of submitting false information is encompassed in the broader element of receiving payments. We note that a different question would be presented if the converse were true and, instead, New Jersey law referred to the submission of false information and New York law referred to the receipt of payments. In such circumstance, the submission of the false information would not necessarily have proven the receipt of the payments based on that submission.

With respect to the second specification contained in the statement of charges, petitioner has not proven this specification, by a preponderance of the evidence and respondent is not guilty thereof.

Petitioner alleges that if the New Jersey criminal act were committed in New York such act would have constituted professional misconduct under Education Law §6509(5)(b). This contention is frivolous.

The second specification of the charges was brought pursuant to Education Law §6509(5)(b). That statute requires proof of a

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definition of professional misconduct under Education Law §6509 which would have been met if the conduct, upon which the finding of the duly authorized sister state disciplinary agency was based, had been committed in New York. The conduct found by the New Jersey State Board of Medical Examiners relates to respondent's having been convicted of certain crimes. Such conduct obviously did not relate to any finding of improper professional practice or professional misconduct having been made by another state's duly authorized professional disciplinary agency. The correct analogue of Education Law §6509(5)(a)(iii), which, might have been, but as merely a repetition of the first specification, was not alleged in the second specification. Accordingly, the second specification as presently pleaded and tried, is deficient.

Therefore, contrary to petitioner's claim that "no Dragan problem exists in this matter, petitioner has failed to show, as it is required, that the conduct underlying the finding constitutes professional misconduct in New York. Dragan v. Commissioner, 142 A.D.2d 846 (3rd Dept. 1988); Greenwald v. Board of Regents 144 A.D.2d 841 (3rd Dept. 1988).

Accordingly, we unanimously determine that the second specification of the charges be dismissed.

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**RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED**

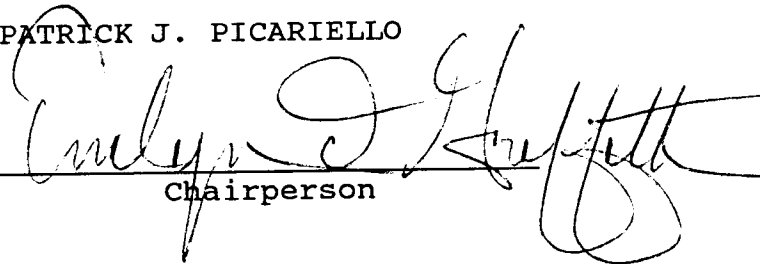
Respondent's license to practice as a physician in the State of New York be suspended for one year upon the first specification of the charges of which we recommend respondent be found guilty and execution of said suspension be stayed. In arriving at our recommendation as to the measure of discipline to be imposed, we have considered the record, the dismissal of the second of the two specifications, the underlying criminal conviction occurred over 4 years before this proceeding was commenced, the fact that petitioner sought a penalty in New York concurrent with the New Jersey sanction which has already terminated, the fact that petitioner did not seek any actual suspension or any probation, and the restitution and fine imposed upon respondent in the underlying criminal proceeding.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO


Chairperson

Dated:

5/30/90

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

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IN THE MATTER : STATEMENT
OF : OF
EUI DON JOO, M.D. : CHARGES

-----X

EUI DON JOO, M.D., the Respondent, was authorized to practice medicine in New York State on May 14, 1975 by the issuance of license number 123740 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 at 29 Tip Top Way, Berkeley Heights, New Jersey 07922.

FIRST SPECIFICATION

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6509(5) (a) (iii) (McKinney 1985) in that he has been convicted of committing an act constituting a crime under the laws of another jurisdiction which, if committed within this state, would have constituted a crime under New York State law, specifically:

EXHIBIT "A"

On or about May 31, 1985, the Respondent was convicted upon his plea of guilty in the New Jersey Superior Court, Union County, of six counts of wilfully receiving medical assistance payments under the New Jersey Medical Assistance and Health Services Act to which he was not entitled in violation of N.J. Stat. Section 30:4D-17(a) (1987), which act if committed within New York State would have constituted a crime under N.Y. Soc. Serv. Law Section 366-b(2) (McKinney 1983).

On or about July 8, 1985, Respondent was sentenced to five years probation on each count (concurrent), a fine of \$6,000.00, restitution of \$8,092.73 to the New Jersey Division of Medicaid Assistance and Health Services, a penalty of \$150.00 and 180 hours of community service.

SECOND SPECIFICATION

2. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6509(5)(b) (McKinney 1985) in that he has been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically:

On or about February 12, 1986 the New Jersey State Board of Medical Examiners ("Board") found, after a hearing, that the Respondent's criminal conviction alleged in paragraph 1 constituted a crime involving moral turpitude and that the crime related adversely to an activity regulated by the Board in violation of N.J. Stat. Section 45:1-24(f), which act if committed in New York State would have constituted professional misconduct under N.Y. Educ. Law Section 6509(5)(b) (McKinney 1985).

The Board suspended Respondent's license for three years, six months active suspension and two and one-half years stayed suspension, and ordered that Respondent perform 300 hours of community service.

DATED: New York, New York
February 15, 1990



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

**ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK**

EUI DON JOO

CALENDAR NO. 10711



The University of the State of New York

IN THE MATTER

OF

EUI DON JOO
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 10711

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10711, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (June 22, 1990): That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of EUI DON JOO, respondent, be accepted; that respondent is guilty of the first specification by a preponderance of the evidence and the second specification be dismissed; that respondent's license and registration to practice as a physician in the State of New York be suspended for one year upon the first specification of the charges of which respondent was found guilty and execution of said suspension be stayed; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of

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the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 2nd day of

July 1990.
Thomas Sobol

Commissioner of Education