



# 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

August 6, 2003

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Bruce M. Forester, M.D.  
55 Northway  
Bronxville, New York 10708

Bruce M. Forester, M.D.  
51 East 73 Street  
New York, New York 10021

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

James R. Denlea, Esq.  
Barry B. Cepelewicz, M.D., J.D.  
Meiselman, Denlea, Packman & Eberz  
1311 Mamaroneck Avenue  
White Plains, New York 10602

**RE: In the Matter of Bruce M. Forester, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-212) 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.

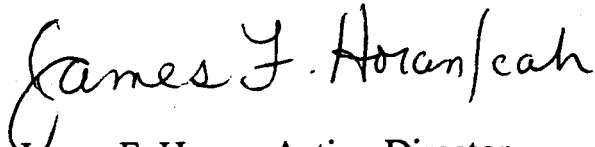
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "James F. Horan/cah". The signature is written in dark ink and is positioned above the typed name of the signatory.

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
BRUCE M. FORESTER, M.D.**

**DETERMINATION  
AND  
ORDER**

**BPMC 03-212**

A hearing was held on July 28, 2003, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding, dated July 3, 2003, and a Statement of Charges, also dated July 3, 2003, were served upon the Respondent, **Bruce M. Forester, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Irving S. Caplan**, Chairperson, **Datta G. Wagle, M.D.**, and **Ernst A. Kopp, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by Meiselman, Denlea, Packman & Eberz, 1311 Mamaroneck Avenue, White Plains, New York 10602, **Barry B. Cepelewicz, M.D., J.D.**, and **James R. Denlea, Esq.**, of Counsel.

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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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). A copy of the Commissioner's Order and Notice of Referral Proceeding and a copy of the Statement of Charges are attached to this Determination and Order as Appendix 1.

## **WITNESSES**

For the Petitioner: None

For the Respondent: Bruce M. Forester, M.D.

## **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 of fact were unanimous.

1. Bruce M. Forester, M.D., the Respondent, was authorized to practice medicine in New York State on July 18, 1966, by the issuance of license number 97028 by the New York State Education Department (Petitioner's Ex. 4).

2. On October 15, 2002, in the United States District Court, Southern District of New York, the Respondent was found guilty, based on a plea of guilty, of one count of Health Care Fraud, in violation of 18 USC Sections 1347 and 2, a Class C felony, and eleven counts of False Statements Relating to Health Care Matters, in violation of 18 USC Sections 1035(a) and 2, Class D felonies (Petitioner's Ex. 5).

3. On March 28, 2003, the Respondent was sentenced to one month imprisonment, two years supervised release with conditions upon release from imprisonment (the conditions included five months home confinement), a \$10,000.00 fine, \$15,013.28 restitution, and a \$120.00 special assessment (Petitioner's Ex. 6).

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

#### **SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

The Respondent, a psychiatrist, has been convicted of one count of Health Care Fraud and eleven counts of False Statements Relating to Health Care Matters. All the counts stem from the Respondent's billings to Fortis Benefits Insurance Company ("Fortis") for psychotherapy appointments that were not kept by a patient, J.C. The Respondent, during the early stages of his treatment of J.C., sent bills for his services to J.C.'s father. These bills included charges for sessions that J.C. skipped. In October 2000, J.C.'s father asked the Respondent to bill Fortis for the psychiatric services provided to J.C. The Respondent billed Fortis for these services from October 2000 through September 2001. He typically billed Fortis for six sessions per week and continued his practice of billing for all scheduled sessions regardless of whether J.C.

attended or was a "no show." From October 2000 to April 2001, this often meant that six sessions were billed, but only three were conducted. In April 2001, the Respondent and J.C. agreed that all future sessions would be telephone sessions. There was no contact of any type after that between J.C. and the Respondent or his staff. The Respondent, nonetheless, continued to bill Fortis for six sessions per week until late September 2001. This included two weeks in June 2001 when the Respondent was in Russia. (Prior to the beginning of that two-week period, the Respondent left a message on J.C.'s answering machine informing J.C. of the telephone number in Russia that he could call to have telephone sessions with the Respondent.) At no time when the Respondent was billing Fortis, an insurance company that does not pay for missed sessions, did the Respondent inform Fortis that some of the billings for J.C. were for missed sessions.

The Respondent stated at the hearing that he was guilty of the crimes for which he had been convicted, but claimed that there were mitigating circumstances associated with the crimes. The Respondent claimed that he had not known that Fortis did not pay for missed sessions and that his crime, therefore, was the result of ignorance rather than an intent to mislead and steal from Fortis.

This position is inconsistent with the definition of the crimes for which the Respondent was convicted. The Respondent was convicted of Health Care Fraud pursuant to 18 U.S.C. Section 1347. That statute does not criminalize acts of ignorance or honest mistakes. The statute provides that a person is guilty of Health Care Fraud only if he "knowingly and willfully executes ... a scheme or artifice (1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by ... any health care benefit program." The Respondent was also convicted of False Statements Relating to Health Care Matters under 18 U.S.C. Section 1035(a). That statute provides that a

person is guilty of this crime only if, in relation to a health care benefit program, he "knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or (2) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry." In the case of both crimes, if a person did not perform the allegedly criminal behavior "knowingly and willfully," he has not committed these crimes.

Pursuant to Public Health Law Section 230(10)(p), the Hearing Committee may not consider a claim that a respondent in an expedited hearing did not commit the crime for which he was convicted. This prohibition applies to every element of the crime. Therefore, the Hearing Committee must and will reject the Respondent's claim that he obtained reimbursement from Fortis to which he was not entitled because he was ignorant of Fortis's reimbursement limitations. The Respondent knowingly and willfully defrauded Fortis of this money.

The Respondent also argued in mitigation that his motivation for billing Fortis for missed sessions was to help J.C., not to obtain money for himself. The Respondent testified that he had hoped that Fortis would notify J.C. that a copayment was due the Respondent for the therapy sessions, including the missed sessions, and that J.C.'s father would become aware of this. The Respondent testified that J.C.'s father, after seeing this information about missed sessions, would prevail upon his son to stop missing sessions. Therefore, according to the Respondent, billing Fortis for missed sessions was intended to cause J.C., an irresponsible person, to become more responsible and stop missing sessions.

The majority of the Hearing Committee members are unconvinced by this argument. They do not believe, particularly for the months of April through September of

2001, that the Respondent could have believed that billing for missed sessions could have such an effect on J.C. During those six months, J.C. missed every one of his six sessions per week and failed to maintain any type of contact with the Respondent or his office. The majority of the Hearing Committee members believe that the Respondent did not have a sincere belief during this period that billing Fortis for missed sessions was going to have any effect on J.C.'s attitude or behavior.

The Petitioner recommended that the Respondent's license to practice medicine be revoked. The Hearing Committee believes that such a severe sanction is unnecessary. The Hearing Committee agrees with the Petitioner that a serious punishment is warranted by the Respondent's crimes, but recognizes that such a punishment has been imposed in the criminal process. The Respondent's incarceration, although only one month in duration, was particularly difficult and painful because of the physical response he had to the experience. The Respondent testified credibly to sleep deprivation during his imprisonment that was so severe that it caused seizures and hospitalization.

Another factor in the Respondent's favor is that, apart from his billings to Fortis for J.C., he has a clean record. He has practiced medicine since 1966 with no other problems, either with billing practices or with quality of care. His practice of medicine has resulted in no malpractice complaints, professional misconduct charges or criminal proceedings other than the one that is the subject of this hearing.

Another factor in the Respondent's favor is the exceptionally high quality of care he provides. Respondent's Exhibits C and D contain numerous letters from colleagues, friends, family and patients attesting to the Respondent's dedication to his patients and his professional excellence. A penalty that would prevent the Respondent's continued practice would be a disservice to his present patients and potential future patients.



Given the Respondent's traumatic experience with the criminal justice system and his otherwise clean record, the Hearing Committee believes that a repetition of the Respondent's criminal behavior is a very remote possibility. This belief plus the Hearing Committee's opinion of the quality of the Respondent's medical practice lead the Hearing Committee to impose the penalties in the Order, below, rather than the revocation recommended by the Petitioner.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to suspended for five years. The suspension is stayed and shall remain stayed provided that the Respondent complies with all the terms of this Order.

2. A civil penalty of \$10,000.00 is levied on the Respondent. The civil penalty must be paid within 90 days of the effective date of this Order. The payment must be made to the Bureau of Accounts Management, NYS Department of Health, Corning Tower, Room 1258, Empire State Plaza, Albany, New York 12237. Failure to pay the civil penalty within the required time shall subject the Respondent to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits and licenses (Tax Law Section 171[17], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).

3. The Respondent is placed on probation for a period of three years. The terms of probation are found in paragraphs 4 through 11 of this Order.

4. The 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. If, during the period of probation, the Respondent commits professional misconduct as enumerated in New York State Education Law Sections 6530 or 6531, such act shall be deemed a violation of probation and an action may be taken against the Respondent's license pursuant to New York State Public Health Law Section 230(19).

5. The Respondent shall submit to the New York State Department of Health, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Troy, New York 12180-2299 ("OPMC") written notification of any change in 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.

6. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order and shall personally meet with a person designated by OPMC when so requested.

7. The period of probation shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. The Respondent shall notify OPMC, in writing, if the Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of 30 consecutive days or more. The Respondent shall notify OPMC 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 the Respondent's return to practice in New York State.

8. During the period of probation, the Respondent's professional performance

may be reviewed by OPMC. This review may include, but shall not be limited to, a review of patient records and/or hospital charts, interviews with or periodic visits with the Respondent and his staff at practice locations or OPMC offices.

9. During the period of probation, the Respondent's medical record keeping and billing shall be subject to the review of a monitor proposed by the Respondent and subject to the written approval of OPMC. The Respondent shall make his proposal within 30 days of the effective date of this Order. The Respondent shall make available to the monitor all the medical and billing records of his practice. The monitor shall review records at least once a month and shall review records for all the Respondent's current patients or twenty patients per month, whichever is the lesser number. The monitor shall submit a quarterly written report to OPMC addressing the adequacy of the Respondent's medical records and billing practices. Any refusal to cooperate with the monitor shall be reported by the monitor to OPMC within 24 hours. The Respondent is solely responsible for all expenses associated with monitoring.

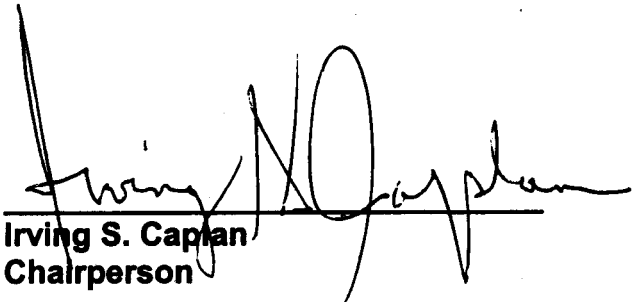
10. The Respondent shall perform 200 hours of community service during each of the first two years of probation and 100 hours of community service during the third year of probation. The service must consist of the provision of medical care at a facility or organization that provides medical services to a needy or underserved population. A written proposal for community service must be submitted to, and subject to the written approval of OPMC.

11. During the first year of probation, the Respondent shall enroll in and complete successfully continuing medical education courses in medical record keeping and billing practices. The Respondent shall propose and OPMC shall approve the courses to be taken.

12. Upon receipt of evidence of noncompliance with the terms of this Order, OPMC or the State Board for Professional Medical Conduct may initiate a violation of probation proceeding and/or any other proceeding against the Respondent as may be authorized by law.

13. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Malone, New York  
August 4, 2003



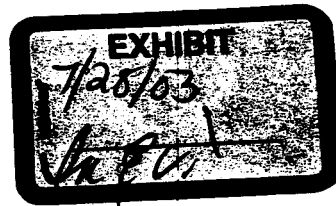
Irving S. Caplan  
Chairperson

Datta G. Wagle, M.D.  
Ernst A. Kopp, M.D.

# **APPENDIX 1**

ORIGINAL

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



IN THE MATTER

OF

BRUCE M. FORESTER, M.D.  
CO-03-02-0804-A

COMMISSIONER'S  
ORDER  
AND  
NOTICE OF  
REFERRAL  
PROCEEDING

TO: BRUCE M. FORESTER, M.D.  
55 Northway  
Bronxville, NY 10708

BRUCE M. FORESTER, M.D.  
51 East 73 Street  
New York, NY 10021

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached, hereto, and made a part hereof, has determined that **BRUCE M. FORESTER, M.D.**, Respondent, licensed to practice medicine in New York state on July 18, 1966, by license number 097028, has been found guilty, based on a plea of guilty, of committing acts constituting felonies under federal law in the United States District Court, Southern District of New York.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **BRUCE M. FORESTER, M.D.**, Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine. This order shall remain in effect

unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 28<sup>th</sup> day of July, 2003 at 10:00 am in the forenoon at The Best Western Rensselaer Inn, 1800 6<sup>th</sup> Avenue, Troy, New York 12180. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents. 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. Respondent has the right cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

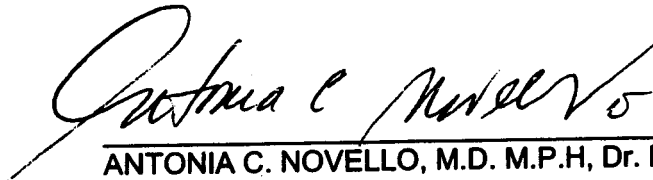
At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO  
PRACTICE MEDICINE IN NEW YORK STATE BE  
REVOKED OR SUSPENDED, AND/OR THAT  
YOU MAY BE FINED OR SUBJECT TO OTHER  
SANCTIONS SET FORTH IN NEW YORK PUBLIC  
HEALTH LAW SECTION 230-A. YOU ARE  
URGED TO OBTAIN AN ATTORNEY FOR THIS  
MATTER.**



DATED: Albany, New York

July 3, 2003



ANTONIA C. NOVELLO, M.D. M.P.H, Dr. P.H.,  
Commissioner

Inquires should be addressed to:

Robert Bogan  
Associate Counsel  
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  
BRUCE M. FORESTER, M.D.  
CO-03-02-0804-A

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STATEMENT  
OF  
CHARGES

BRUCE M. FORESTER, M.D., the Respondent, was authorized to practice medicine in New York state on July 18, 1966, by the issuance of license number 097028 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about October 15, 2002, in the United States District Court, Southern District of New York, Respondent was found guilty, based on a plea of guilty, of one (1) count of Health Care Fraud, in violation of 18 USC 1347 and 2, a Class C felony, and ~~twelve~~ <sup>eleven (11)</sup> counts of False Statements Relating to Health Care Matters, in violation of 18 USC 1035(a) and 2, a Class D felony, and on or about March 28, 2003, was sentenced to one (1) month confinement, two (2) years supervised release with conditions upon release from confinement, to include five (5) months home confinement, a \$10,000.00 fine, \$15,013.28 restitution, and a \$120.00 special 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: *July 3*, 2003  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct