



Albany, New York 12237

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must than be delivered to the Office of Professional Medical Conduct in the manner noted above.

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), "(t)he 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.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

Tyrone T. Butler nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

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IN THE MATTER : HEARING
OF : COMMITTEE'S
: DETERMINATION
: AND
PRABHA PRAKASH, M.D. : ORDER NO. BPMC-93-18
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A Notice of Hearing and Statement of Charges, both dated September 16, 1992, were served upon the Respondent, Prabha Prakash, M.D. **KENNETH KOWALD**, (Chairperson), **RAFAEL A. LANTIGUA, M.D.**, and **GEORGE HYAMS, M.D.**, duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law.

BENJAMIN J. MIGLIORE, Administrative Law Judge, served as the Hearing Officer. A hearing was held on January 6, 1993 at 5 Penn Plaza, Conference Room A, Sixth Floor, New York City. The Department of Health appeared by Marcia E. Kaplan, Esq., Associate Counsel. The Respondent appeared by George Weinbaum, Esq. 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.

STATEMENT OF CASE

This proceeding was brought pursuant to Public Health Law §230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of N.Y. Education Law §6530(9) (McKinney Supp.

1992). 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 the 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, Respondent is charged with professional misconduct pursuant to N.Y. Education Law §6530(9)(a)(i) (McKinney Supp. 1992). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Prabha Prakash, M.D. (hereinafter Respondent) was authorized to practice medicine in New York State on August 11, 1978 by the issuance of license number 135525 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, 1991 through December 31, 1992. (Pet. Ex. 1)

2. On February 6, 1992, the Respondent was convicted after a plea of guilty in the County Court of the State of New York, County of Westchester, of offering a false instrument for filing in the second degree, a Class A misdemeanor, in violation of §175.30 of the Penal Law. (Pet. Ex. 1)

3. The misdemeanor conviction involved the presentment of a claim for payment under the Medicaid Program to Computer Sciences Corporation, a fiscal agent for the State of New York, which claim contained false statements and information, in that Respondent provided psychiatric therapy of "approximately 45 to 50 minutes" to Medicaid recipient Lydia Ortiz on June 6, 1991, when Respondent knew that she had not provided such service. (Pet. Ex. 1)

4. Respondent was sentenced on February 6, 1992 to a one-year conditional discharge and restitution of \$8,238.00 to New York State. (Pet. Ex. 3A)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee unanimously concluded that the Department had met its burden of proof. The preponderance of the evidence clearly demonstrated that Respondent was convicted of a crime under the State Penal Law, by virtue of her plea of guilty to the charge of offering a false instrument for filing in the second degree. This constitutes professional misconduct as defined in N.Y. Education Law §6530(9)(a)(i) (McKinney Supp. 1992). The Hearing Committee, therefore, sustained the specification of misconduct contained in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that an appropriate sanction would be a censure and reprimand of the Respondent. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

A physician's license to practice medicine is a privilege granted to the members of the profession. By holding oneself out as a physician, Respondent has placed herself in a position of public trust. Respondent's conduct while reprehensible contained some mitigating factors. Respondent was remorseful and repeatedly stated that she had

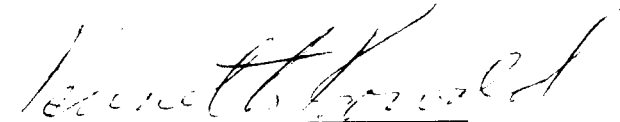
not completely read the Department of Social Services manual explaining billing codes (Resp. Ex. E). Moreover, Respondent made full restitution of \$8,238.00 to New York State and she was never found to have billed patients that she did not provide professional services. Other mitigating factors are that the Respondent no longer is engaged in private practice (she works full-time in a public institution) and there is no health risk to the public at large. The County Court Judge believed the Respondent when she stated that she was "truly sorry" (Pet. Ex. 3F) and issued a conditional discharge. Consequently, the Hearing Committee concluded that a censure and reprimand is the appropriate sanction.

ORDER

Based upon the foregoing, it is hereby ordered
that:

1. The specification of professional misconduct
contained in the Statement of Charges (Pet. Ex.
1) is **sustained**; and
2. Respondent shall be issued a **censure and**
reprimand.

DATED: Richmond Hill, New York
February 4, 1993



KENNETH KOWALD
Chairperson

GEORGE HYAMS, M.D.
RAFAEL A. LANTIGUA, M.D.

TO: Marcia Kaplan, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

George Weinbaum, Esq.
Attorney at Law
3 Barker Avenue
White Plains, New York 10601

A P P E N D I X I

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

-----X
: IN THE MATTER :
: OF :
: PRABHA PRAKASH, M.D. :
-----X

NOTICE OF
REFERRAL
PROCEEDING

TO: PRABHA PRAKASH, M.D.
30 Lake Street Apt. 7J
White Plains, N.Y. 10603-4002

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1992, as amended by ch 37, Laws of 1992) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 19th day of November, 1992 at 1:00 o'clock in the afternoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

PLAINTIFF'S
DEFENDANT'S
COMPANY'S
DEPARTMENT'S
PETITIONER'S for identification
RESPONDENTS in evidence
DATE 11/6/93 REPORTER MM
STERLING REPORTING SERVICE, INC.

EXHIBIT 1

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 which 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 Larry Storch, Administrative Law Judge, New York State Department of Health, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, as well as the Department of Health attorney indicated below, on or before November 9, 1992 .

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with Judge Storch at the address indicated above on or before November 9, 1992 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 Judge Storch 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: New York, New York
September 16 1992


CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
212 613-2615

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

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IN THE MATTER : STATEMENT
OF : OF
PRABHA PRAKASH, M.D. : CHARGES

-----X

PRABHA PRAKASH, M.D., the Respondent, was authorized to practice medicine in New York State on August 11, 1978 by the issuance of license number 135525 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, 1991 through December 31, 1992.

FIRST SPECIFICATION

HAVING BEEN CONVICTED OF
AN ACT CONSTITUTING A CRIME
UNDER NEW YORK STATE LAW

Respondent is charged with professional misconduct with the meaning of N.Y. Educ. Law Sec. 6530(9)(a)(i) (McKinney Supp

1992) in that she has been convicted of committing an act constituting a crime under New York State law, specifically:

On or about February 6, 1992, the Respondent was convicted after a plea of guilty in the County Court of the State of New York, County of Westchester, of Offering a False Instrument for Filing in the Second Degree, a Class A misdemeanor, in violation of Section 175.30 of the Penal Law, in that from on or about January 1, 1989 to on or about September 30, 1991, the Respondent, intending to defraud the State of New York, in the County of Westchester, presented a claim for payment under the Medicaid program to Computer Sciences Corporation, a fiscal agent for the State of New York, which claim contained false statements and information, in that it was claimed that Respondent had provided procedure code 90844, a psychiatric therapy procedure code for a session of "approximately 45 to 50 minutes (37 minutes to 1 hour))" to Medicaid recipient Lydia Ortiz on June 6, 1991, when Respondent knew that she had not provided such service, and that Respondent offered and presented this false Medicaid claim with the knowledge and belief that it would be filed with and become part of the records of the State and its fiscal agent.

On or about February 6, 1992, the Respondent was sentenced to a one year conditional discharge and restitution of \$8,238 to New York State.

DATED: NEW YORK, NEW YORK

September 16, 1992



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct