



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

March 29, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marta Sachey, Esq.
Associate Counsel
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Robert P. Roche, Esq.
Roche, Corrigan, McCoy & Bush
Van Zandt Building
36 South Pearl Street
Albany, New York 12207

Anibal Pedro Herrera, M.D.
234 East Main Street
Middletown, New York 10940-4035

RE: In the Matter of Anibal P. Herrera, M.D.

EFFECTIVE DATE: 04/05/95

Dear Ms. Sachey, Mr. Roche and Dr. Herrera:

Enclosed please find the Determination and Order (No. 95-73) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

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

RECEIVED
MAY 22 1995
MEDICAL CONDUCT

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 then 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), "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.

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.

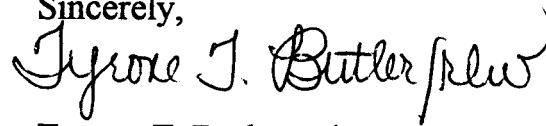
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
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.

Sincerely,

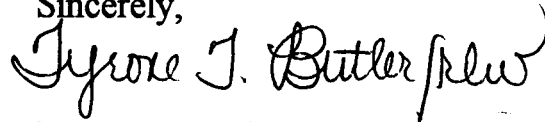
A handwritten signature in cursive script that reads "Tyrone T. Butler". The signature is fluid and stylized, with the first and last names being more prominent.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:m
Enclosure

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

**IN THE MATTER
OF
ANIBAL P. HERRERA, M.D.**

**DETERMINATION
AND
ORDER**
BPMC-95-73

A Notice of Hearing and Statement of Charges, both dated November 9, 1994, were served upon the Respondent, **ANIBAL P. HERRERA, M.D.** **CHARLOTTE BUCHANAN**, (Chair), **PETER B. KANE, M.D.**, and **JOHN D. FULCO, M.D.**, 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. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on December 28, 1994. The Department of Health appeared by **MARTA SACHEY, Esq.**, Associate Counsel. The Respondent appeared by **ROCHE, CORRIGAN, MCCOY & BUSH, ESQS.**, **ROBERT P. ROCHE, ESQ.**, of Counsel. 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 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as 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. Respondent was authorized to practice medicine in New York State on March 16, 1965 by the issuance of license number 094107 by the New York State Education Department. (Pet. Ex. #3)

2. On November 2, 1992, Respondent was convicted in the Middletown City Court (Docket No. 92-20477 of one (1) count of Offering a False Instrument for Filing in the Second Degree, a Class A misdemeanor, in violation of N.Y. Penal Law Section 175.30. (Pet. Ex. 4 and 5)

3. The complaint on which the conviction was based stated that Respondent submitted numerous Medicaid claims which falsely stated that certain psychiatric services had been provided to Medicaid patients when these services had in fact not been provided. (Pet. Ex. 5)

4. The Respondent was sentenced to a conditional discharge, restitution of \$22,000 to New York State and a fine of \$750. (Pet. Ex. 4)

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 sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was convicted of one (1) count of Offering a False Instrument for Filing in the Second Degree, in violation of the New York Penal Code. He was sentenced to a conditional discharge, fined and ordered to make restitution in the amount of \$22,000. Section 6530(9)(a)(i) of the Education Law defines professional misconduct as "being convicted of committing an act constituting a crime under New York State law." As a result, the Hearing Committee voted to sustain the First Specification of professional misconduct contained within 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 Respondent's license to practice medicine in New York State should be suspended for three years following the effective date of this Determination and Order. The suspension shall be stayed in its entirety, and Respondent placed on probation. The complete terms of probation are attached to this Determination and Order as Appendix II. 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.

At the hearing Respondent testified that he assumed full responsibility for the billing practices in his office. (T. 32) Laura Newkirk, Respondent's part-time secretary, testified that she believed she was following proper billing instructions after the State took over Medicaid

billing in the 1980's and a new manual was issued. It was not until they were confronted with the criminal charge that they realized they were using an improper code. (T. 21, 22)

Notwithstanding the above, Respondent stands convicted of a crime involving fraud against Medicaid. The Hearing Committee believes that crimes against the Medicaid system have a serious negative impact upon the health care system in the State of New York. However, the Hearing Committee has considered several factors in mitigation of a more severe penalty in this instance. These include the fact that Respondent made full restitution in the amount of \$22,000, he has paid a fine of \$750 and he is presently disqualified from participating in the Medicaid program. The Hearing Committee also believes that Respondent continues to provide a valuable service to the Middletown psychiatric community, but that he needs to be more involved in the business practices of his office. Therefore, under the totality of the circumstances, a stayed suspension and probation are the appropriate sanctions in this instance.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** for a period of three (3) years from the effective date of this Determination and Order. The suspension shall be stayed in its entirety, and Respondent shall be placed on probation in accordance with the terms of probation contained in Appendix II which is attached to this Determination and Order and incorporated herein.

Dated: Albany, New York
March 27, 1995

Charlotte S. Buchanan
CHARLOTTE BUCHANAN (Chair)

PETER B. KANE, M.D.
JOHN D. FULCO, M.D.

TO: Marta Sachey, Esq.
Associate Counsel
NYS Department of Health
Tower Bldg. - 24th Floor
Albany, NY 12237

Robert P. Roche, Esq.
Roche, Corrigan, McCoy & Bush
Van Zandt Building
36 South Pearl Street
Albany, NY 12207

Anibal Pedro Herrera, M.D.
234 East Main Street
Middletown, NY 10940-4035

APPENDIX I

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
ANIBAL PEDRO HERRERA, M.D. : PROCEEDING

-----x

TO: Anibal Pedro Herrera, M.D.
234 East Main Street
Middletown, New York 10940-4035

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 28th day of December, 1994 at 10:00 a.m. in the forenoon of that day at the Empire State Plaza, New York State Cultural Education Building, Conference Room B, Concourse Level, Albany, New York 12230.

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.

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 the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, - Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 14, 1994.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before December 14, 1994 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
November 9, 1994

Peter D. Van Buren

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

Inquiries should be addressed to:

E. Marta Sachey
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT

OF : OF

ANIBAL PEDRO HERRERA, M.D. : CHARGES

-----X

ANIBAL PEDRO HERRERA, M.D., the Respondent, was authorized to practice medicine in New York State on March 16, 1963 by the issuance of license number 094107 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993, through December 31, 1994, 234 East Main Street, Middletown, New York 10940-4035.

FACTUAL ALLEGATIONS

1. Respondent, on November 2, 1992, in the Middletown City Court (Docket No. 92-20477) was convicted of one count of Offering a False Instrument for Filing in the Second Degree, a class A misdemeanor, in violation of N.Y. Penal Law §175.30.
2. Respondent was sentenced to a conditional discharge, restitution of \$22,000.00 to New York State, and a fine of \$750.00.

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)a)(i) (McKinney Supp. 1994) by reason of being convicted of committing an act constituting a crime under New York State law, in that Petitioner charges the facts in Paragraphs 1 and 2.

DATED: *Nov. 9*, 1994
Albany, New York

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

APPENDIX II
TERMS OF PROBATION

1. Dr. Herrera 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 imposed by law and by his profession.
2. Dr. Herrera shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Herrera shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Dr. Herrera leaves New York to reside or practice outside the State, Dr. Herrera shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.
5. Dr. Herrera's probation shall be supervised by the Office of Professional Medical Conduct.
6. During the probationary period, Dr. Herrera shall have all billing records from his medical practice monitored by a health care specialist from a national accounting firm.
7. During the probationary period, Dr. Herrera shall submit semi-annual accounting reports, which have been prepared by the aforesaid accounting firm, to the Office of Professional Medical Conduct.
8. Dr. Herrera shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.

9. Dr. Herrera shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Herrera elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.
10. If there is full compliance with every term set forth herein, Dr. Herrera may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Herrera pursuant to New York Public Health Law Section 230(19) or any other applicable laws.