



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

September 4, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180

Mel A. Sachs, Esq.
531 West 19th Street
New York, New York 10011

John L. Bolling, M.D.
203 West 138th Street
New York, New York 10030

RE: In the Matter of John L. Bolling, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-236) 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.

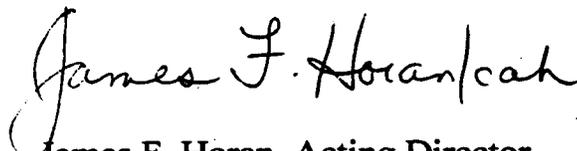
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink and is positioned above the typed name and title.

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

IN THE MATTER
OF
JOHN L. BOLLING, M.D.

DETERMINATION

AND

ORDER

BPMC #03-236

COPY

A "Commissioner's Order and Notice of Referral Proceeding" and a Statement of Charges, both dated April 30, 2003, were served upon the Respondent, **JOHN L. BOLLING, M.D.** **FRED S. LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **MR. CHARLES AHLERS**, 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 August 20, 2003, 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.**, of Counsel. The Respondent appeared in person and by **MEL A. SACHS, 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 Sections 230(12)(b) and 230(10)(p). Section 230(12)(b) of the statute provides that when a licensee has been convicted of a felony, the Commissioner of Health may issue an order requiring the licensee to refrain from practicing medicine until a hearing can be held to determine what action should be taken with regard to the conviction. Section 230(10)(p) of 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 Commissioner issued an order requiring Respondent to refrain from practicing medicine until this hearing could be held, based upon his conviction of a felony. The Statement of Charges alleges that Respondent committed professional misconduct pursuant to Education Law Section 6530(9)(a)(i) when he was convicted of a felony under New York Law. 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:

Rev. Etta Lucas
Shirley Goodman
Florence Mourad
Dale Elizabeth Kinney

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.

1. **JOHN L. BOLLING, M.D.**, the Respondent, was authorized to practice medicine in New York State on August 18, 1969, by the issuance of license number 104449 by the New York State Education Department (Ex. 4).
2. On September 23, 2002, Respondent, by a plea of guilty, was convicted of the crime of grand larceny, third degree, a class D felony, in the Supreme Court of the State of New York, County of New York. Respondent was sentenced to five years probation and payment of restitution totalling \$131,344.67 (Ex. 9).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent's conviction of a felony constitutes misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(i), and that the appropriate penalty for this misconduct is a five year suspension of Respondent's medical license, all but two of which will be stayed, five years probation (with terms to be set forth below), and the completion of a medical ethics course.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(a)(i) by having been convicted of a crime under the laws of New York State.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent was convicted of the class C felony of grand larceny, third degree, which led to the issuance of the Commissioner's Order and the institution of these proceedings. The criminal court documents in evidence indicate that the subject matter of the criminal case was Respondent's submission of claims to the Medicaid program, from about January 7, 1995 to October 2, 2000, for psychiatric care allegedly provided to Medicaid recipients when he knew such care had not been provided (Ex. 5).

Inasmuch as the commission of a crime under New York State law is, by definition, misconduct (New York Education Law §6530(9)(a)(i)), the only issue that can be decided in this proceeding is the appropriate penalty for the misconduct (Public Health Law 230(10)(p)).

It was essentially Respondent's position at the hearing, offered in an attempt to obtain mitigation of the penalty that might be imposed, that he did not knowingly engage in criminal conduct, and that the case resulted from billing irregularities perpetrated by the person in his office that did his billing. The Hearing Committee is precluded from considering this argument by the statute governing this proceeding (Public Health Law

§230(10)(p)), which makes the finding of guilt implicit in the criminal conviction binding at this hearing.

Respondent's professions of innocence are inconsistent with the definition of the crime Respondent pled guilty to (see Penal Law, sections 155.35, 155.05), which requires "intent" to misappropriate property by a wrongful taking, obtaining or withholding of property from its rightful owner. In addition, the Hearing Committee finds Respondent's testimony that he had no idea the inaccurate billings were being submitted on his behalf to the Medicaid program for almost six years to be inherently incredible, and Respondent's lack of forthrightness is a factor considered by the Hearing Committee in assessing a stiff penalty herein.

The Hearing Committee feels that revocation of Respondent's license would have been the appropriate penalty, except for the considerable evidence presented at the hearing in support of the Respondent and his medical practice. This evidence, consisting of the testimony of, and letters from, patients, parents of patients, community members and other professionals demonstrates, to summarize, that Respondent may be the only African American psychiatrist that accepts Medicaid in Harlem; that he has always worked very long hours and taken the most difficult cases involving underprivileged patients on short notice; that he has provided many patients, often children with severe physical and emotional disabilities, with high quality care they might not have otherwise been able to obtain; and that he has provided extensive and valuable community service (Ex.'s A-JJ, MM; testimony of Respondent's witnesses).

The Hearing Committee feels that although a stiff penalty is called for, given the nature of Respondent's criminal conviction, the community Respondent serves should not be permanently deprived of his services by revocation of his license. Accordingly, the

sanction of a five-year license suspension is hereby imposed, starting with the effective date of the Commissioner's Order suspending his license (the order was dated April 30, 2003), with all but two years stayed. Once Respondent's license is restored in full, he will be placed on probation for five years, with conditions to be detailed in the attached order. The most notable provision of this probation is that Respondent, during the period of probation, will be limited to practice in a hospital, clinic or other medical/mental health facility where he will not be responsible for his own billings and his provision of billing information will be supervised and monitored. In addition, Respondent will be required to complete a medical ethics course, to be approved by the Board, through its Office of Professional Medical Conduct, before he can commence practice again in this state.

It is the belief of the Hearing Committee that the penalties imposed herein strike the best balance between the imposition of appropriate discipline for a physician who has so little regard for the law and the sanctity of the medical profession that he steals funds from the Medicaid program, and the needs of the community to have access to high quality mental health care.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **JOHN L. BOLLING, M.D.** is hereby **SUSPENDED** for a period of **FIVE (5) YEARS**, starting with the effective date of the Commissioner's Order. **ALL BUT TWO (2) YEARS** of this suspension is **STAYED**.
2. The Respondent is hereby placed on **PROBATION** for a period of **FIVE (5) YEARS**, to commence upon the completion of the suspension. The terms of probation are detailed below.
3. A requirement is hereby imposed that Respondent successfully complete a **MEDICAL ETHICS COURSE**, to be approved by the Board, through its Office of Professional Medical Conduct (see address below), before he can commence practice again in this state.
4. The terms of Respondent's probation are as follows:
 - A). During the period of probation, Respondent shall practice only in a hospital, clinic or other medical/mental health facility where he will not be responsible for his own billings and his provision of billing information will be supervised and monitored.
 - B). Respondent shall conduct himself/herself 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 acknowledges that if he commits professional misconduct as enumerated in New York State Education Law sections 6530 or 6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law 230(19).
 - C). At the time of the resumption of practice, and within thirty days of each such action or event thereafter, Respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299, of all changes 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 .

D). 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.

E). The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently 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 then notify the Director 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 Respondent's return to practice in New York State.

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

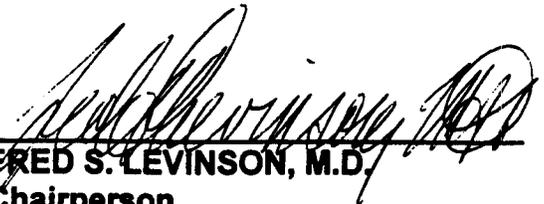
G). Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

H). Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Middletown, New York

Sept. 4, 2003



FRED S. LEVINSON, M.D.
Chairperson

ERNST A. KOPP, M.D.
MR. CHARLES AHLERS

APPENDIX 1

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

IN THE MATTER
OF
JOHN L. BOLLING, M.D.
CO-02-09-4894-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: JOHN L. BOLLING, M.D.
203 West 138th Street
New York, NY 10030

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 **JOHN L. BOLLING, M.D.**, Respondent, licensed to practice medicine in New York state on August 18, 1969, by license number 104449, has been found guilty of committing a felony under New York state law.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **JOHN L. BOLLING, 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 5th day of June, 2003 at 10:00 am in the forenoon at Hedley Park Place, 5th Floor, 433 River Street, Troy, New York and at such other adjourned dates, times, and places as the committee may direct. 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, and to 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 adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of

Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement require detailed affidavits of actual engagement. Claims of illness 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

April 30, 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

IN THE MATTER
OF
JOHN L. BOLLING, M.D.
CO-02-09-4894-A

STATEMENT
OF
CHARGES

JOHN L. BOLLING, M.D., the Respondent, was authorized to practice medicine in New York state on August 18, 1969, by the issuance of license number 104449 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 23, 2002, in the Supreme Court of the State of New York, County of New York, Respondent was found guilty, based on a plea of guilty, of Grand larceny in the third degree, in violation of New York Penal Law §155.35, a class D felony, and on or about February 25, 2003, was sentenced to five (5) years probation and to pay \$131,344.67 restitution.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: *April 30*, 2003
Albany, New York


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