



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

September 5, 1995

RECEIVED

SEP 05 1995

OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Terrence Sheehan, Esq.  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Bruce Herzog, M.D.  
NYS Department of Correctional Services  
Downstate Correctional Facility  
Fishkill, New York

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

Effective Date: 09/12/95

Dear Mr. Sheehan and Dr. Herzog:

Enclosed please find the Determination and Order (No. 95-205) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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.

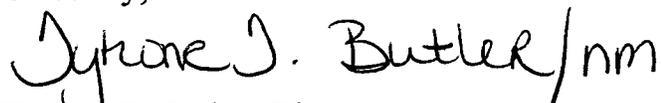
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink that reads "Tyrone T. Butler/nm". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

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

**DETERMINATION  
AND  
ORDER**

BPMC-95-205

A Notice of Referral Proceedings and Statement of Charges, both dated July 26, 1995 were served upon the Respondent, **BRUCE HERZOG, M.D. BENJAMIN WAINFELD, M.D., Chairman** and **SHARON KURITZKY, M.D.**<sup>1</sup>, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10)(3) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on August 25, 1995. The Department of Health appeared by **JEROME JASINSKI, ESQ.**, Acting General Counsel, by **TERRENCE SHEEHAN, ESQ.**, of Counsel. The Respondent failed to appear.

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 § 230 (10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law § 6530(9). 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.

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<sup>1</sup>The third designated panel member, Mr. Louis Paris, was not in attendance due to transportation problems.

In this instant case, the Respondent is charged with professional misconduct pursuant to Education Law § 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 parenthesis 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. Bruce Herzog, M.D., the Respondent, was authorized to practice medicine in New York State on March 1, 1974, by issuance of license number 119141 by the New York State Education Department (Pet.'s Ex. 7).
2. On October 24, 1994, the Respondent pled guilty in Queens County Supreme Court to the felony of grand larceny in the first degree. On February 21, 1995, the Respondent was sentenced to one to three years incarceration. He was also required to sign a confession of judgment in the amount of \$1,047,797.00, representing the amount of fraudulent billings he submitted to the Medical Assistance Program (Medicaid) between 1988 and 1990 (Pet's Ex. 4, 5, 6).

**VOTE OF THE HEARING COMMITTEE**

**SPECIFICATION**

**HAVING BEEN CONVICTED OF A CRIME**

The Respondent is charged with professional misconduct in violation of New York Education Law § 6530(9)(a)(i)(McKinney Supp. 1995) in that the Respondent was convicted of committing an act constituting a crime under New York State law.

**SUSTAINED** (by a vote of 2-0)

**DETERMINATION OF THE HEARING COMMITTEE**

The Respondent was convicted of a serious crime arising from a scheme to defraud the Medicaid Program.

The Respondent did not appear at the present hearing nor did he submit any evidence in mitigation of the charges.

The Hearing Committee determines that the Respondent's license to practice medicine in the State of New York should be **REVOKED** and that a civil penalty in the amount of ten thousand dollars (\$10,000.00) should be assessed against the Respondent.

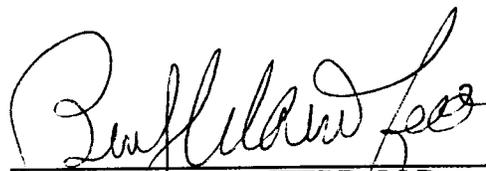
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED.**
2. A civil penalty in the amount of ten thousand dollars (\$10,000.00)<sup>2</sup> is assessed against the Respondent. This penalty is payable within thirty (30) days of the effective date of this ORDER.
3. 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: New York, New York

8/31, 1995

  
BENJAMIN WAINFELD, M.D.  
Chairman

SHARON KURITZKY, M.D.

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<sup>2</sup>Any civil penalty not paid by the date prescribed herein shall be subject 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; and non-renewal of permits or licenses (Tax Law, § 171(27); State Finance Law, § 18; CPLR, § 5001; Executive Law, § 32).



**APPENDIX I**

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

IN THE MATTER  
OF  
BRUCE HERZOG, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

PERSONAL

PERSONAL

RB

TO: BRUCE HERZOG, M.D.  
NYS Department of Correctional Services  
Downstate Correctional Facility  
Fishkill, NY

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on August 24, 1995, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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.

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

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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, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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.

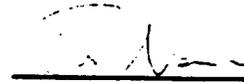
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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: New York, New York  
June 20, 1995



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Terrence Sheehan  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2615

IN THE MATTER  
OF  
BRUCE HERZOG, M.D.

STATEMENT  
OF  
CHARGES

BRUCE HERZOG, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 1, 1974, by the issuance of license number 119141 by the New York State Education Department.

### FACTUAL ALLEGATIONS

- A. On or about October 24, 1994, Respondent pled guilty in Queens County Supreme Court to the felony of grand larceny in the first degree. On or about February 21, 1995, Respondent was sentenced to one to three years incarceration. Respondent was also required to sign a confession of judgment in the amount of \$1,047, 797, representing the amount of fraudulent billings he submitted to the Medical Assistance Program (Medicaid) between 1988 and 1990.

### SPECIFICATION OF CHARGES

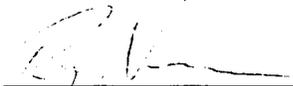
#### HAVING BEEN CONVICTED OR A CRIME

Respondent is charged with professional misconduct in violation of N.Y. Educ. Law Section 6530(9)(a)(i)(McKinney Supp. 1995) in that Respondent was convicted of

committing an act constituting a crime under New York State law. Specifically,  
Petitioner charges:

1. The facts in Paragraph A.

DATED: July 20, 1995  
New York, New York



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct