



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

PUBLIC

Dennis P. Whalen
Executive Deputy Commissioner

September 2, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Abenamar Arrillaga, M.D.
1195A Liberty Avenue
Hillside, New Jersey 07205

RE: In the Matter of Abenamar Arrillaga, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-202) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 penalties other than suspension or revocation 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.

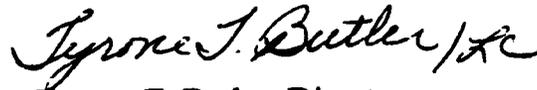
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
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 "Tyrone T. Butler" followed by a stylized flourish.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:lcc
Enclosure

COPY

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

**IN THE MATTER
OF
ABENAMAR ARRILLAGA, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-98-202

IRWIN COHEN, M.D., Chairman, JAMES DUCEY and ZORAIDA NAVARRO, M.D., duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12)(b) of the Public Health Law. **MICHAEL P. McDERMOTT, ESQ.,** Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

SUMMARY OF THE PROCEEDINGS

Commissioner's Summary Order:	July 31, 1998
Statement of Charges:	July 31, 1998
Notice of Summary Proceeding:	August 3, 1998
Hearing Date:	August 18, 1998
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, New York
Date of Deliberations:	August 18, 1998

Petitioner appeared by:

Henry M. Greenberg, Esq.
General Counsel
NYS Department of Health
BY: Terrence Sheehan, Esq., of Counsel

Respondent appeared by:

The Respondent failed to appear.

STATEMENT OF CHARGES

Essentially, the Statement of Charges charges the Respondent with having been convicted of committing an act constituting a crime under federal law.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

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. All Hearing Committee findings were unanimous unless otherwise specified.

1. Abenamar Arrillaga, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 7, 1963, by the issuance of license number 089811 by the New York State Education Department. (Pet.'s Ex. 1)

2. On June 17, 1998, in United States District Court for the Southern District of New York, the Respondent was sentenced to 51 months imprisonment and 3 years of supervised release upon release from prison. The Respondent was further ordered to pay restitution in an amount of \$1,471,926.40. This sentence was imposed upon a June 19, 1996, jury verdict finding Respondent guilty of 44 counts of an indictment [1 count: Medicare fraud conspiracy (18 U.S.C. 371); 43 counts: False statements to Medicare Program (18 U.S.C. 1320 a-7b(a)(2)).] (Pet.'s. Exs. 4 and 5)

3. On July 31, 1998, the Commissioner of Health of the State of New York issued a Summary Order which "ORDERED, pursuant to NY Public Health Law §230(12)(b)(McKinney 1990 and Supp. 1998), that effective immediately, Respondent shall not practice medicine in the State of New York." (Pet.'s Ex. 1)

VOTE OF THE HEARING COMMITTEE
SPECIFICATION
CRIMINAL CONVICTION (Federal)

The Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under federal law.

VOTE: SUSTAINED (3-0)

DETERMINATION OF THE HEARING COMMITTEE

The Respondent was convicted in federal court of serious crimes arising from a scheme to defraud the Medicare 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 **REVOKED**.
2. A civil penalty in the amount of Ten Thousand Dollars (\$10,000.00) is hereby assessed against the Respondent.
3. The Respondent shall pay that sum to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York 12237 within thirty (30) days of the effective date of this Order.
4. Any civil penalty not paid by the prescribed date 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; referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).
5. 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

1998

8/27/


IRWIN COHEN, M.D., Chairperson

**JAMES DUCEY
ZORAIDA NAVARRO, M.D.**

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

**IN THE MATTER
OF
ABENEMAR ARRILLAGA, M.D.**

**NOTICE OF
SUMMARY
PROCEEDING**

**TO: ABENEMAR ARRILLAGA, M.D.
1195A Liberty Avenue
Hillside, NJ**

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(12) and (10)(p) (McKinney 1990 and Supp. 1998 (as amended by Ch. 627 and 599 of the Laws of 1996)) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on August 19, 1998, 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 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (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.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you 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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1998) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary

evidence and a description of physical or other evidence which cannot be photocopied.

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
July 3 1998
[Signature]

[Signature]

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**

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

IN THE MATTER
OF
ABENAMAR ARRILLAGA, M.D.

STATEMENT
OF
CHARGES

ABENAMAR ARRILLAGA, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 7, 1963, by the issuance of license number 089811 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 17, 1996, in United States District Court for the Southern District of New York, Respondent was sentenced to 51 months imprisonment and 3 years of supervised release upon release from prison. Respondent was further ordered to pay restitution in an amount of \$1,471,926.40. This sentence was imposed upon a June 19, 1996, jury verdict finding Respondent guilty of 44 counts of an indictment [1 count: Medicare fraud conspiracy (18 U.S.C. 371); 43 counts: False statements to Medicare Program (18 U.S.C. 1320 a-7b(a)(2)).]

SPECIFICATION

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1996) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraph A.

DATED: July 31, 1998
New York, New York

Roy Nemerson by [signature]

ROY NEMERSON
Deputy Counsel
Bureau of Professional