



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

April 19, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Teodoro Ando, M.D.
139 Basket Road
Webster, New York 14580

Thomas P. Cleary, Esq.
Cleary & Cleary
Lawley Bldg.
120 Delaware Ave., Suite 425
Buffalo, New York 14202

Dianne Abeloff, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001

Effective Date: 04/26/96

RE: In the Matter of Teodoro Ando, M.D.

Dear Dr. Ando, Mr. Cleary and Ms. Abeloff :

Enclosed please find the Determination and Order (No. BPMC-96-89) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Handwritten signature of Tyrone T. Butler in cursive script.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

IN THE MATTER
OF
TEODORO ANDO, M.D.

DETERMINATION
AND
ORDER

BPMC-96-89

EDMUND O. ROTHSCHILD, M.D., (Chair), ROBERT B. BERGMANN, M.D. and MICHAEL A. GONZALEZ, R.P.A. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by JEAN BRESLER, ESQ., Associate Counsel.

Respondent, TEODORO ANDO, M.D., appeared personally and was represented by CLEARY & CLEARY, THOMAS P. CLEARY, ESQ., of counsel.

A Hearing was held on February 27, 1996. Evidence was received and examined. A Transcript of the proceeding was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [hereinafter "P.H.L."])

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

TEODORO ANDO, M.D., ("**Respondent**") is charged with professional misconduct within the meaning of §6530(9)(a)(ii) of the Education Law of the State of New York ("**Education Law**"), to wit: professional misconduct ... by reason of being convicted of committing an act constituting a crime under Federal Law (Petitioner's Exhibit # 1 and §6530[9][a][ii] of the Education Law).

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

¹ P.H.L. §230(10)(p), fifth sentence.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on February 10, 1978 by the issuance of license number 133607 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)².
2. Respondent is registered with the New York State Education Department to practice medicine for the period January 1, 1995 through June 30, 1996 (Petitioner's Exhibit # 2).
3. The Grand Jury, through the United States Attorney, in the Middle District of Pennsylvania, United States District Court, filed an indictment (4: CR-93-00209-001) against Respondent and another individual for various violations of Federal Laws (Petitioner's Exhibit # 3).

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit). Dr. Ando did not submit any exhibits.

4. The indictment (Count I) charged that Respondent, together with another individual, "knowingly and willfully make and present and cause to be made and presented to Pennsylvania Blue Shield ... claims for approximately 17 patients for payments totalling approximately \$123,225.00 upon the United States Department of Health and Human Services; ... knowing that the claims were false, fictitious and fraudulent ..." in violation of Title 18, United States Code §286 (Petitioner's Exhibit # 3).

5. The indictment further charged that Respondent "knowingly and willfully made and present and cause to be made and presented to Pennsylvania Blue Shield ... claims for payments totalling approximately (\$13,950.00 - Count II; \$5,025.00 - Count III; \$23,400.00 - Count IV; \$9,075.00 - Count V; \$2,550.00 - Count VI; \$19,125.00 - Count VII) upon the United States Department of Health and Human Services; ... knowing that the claims were false, fictitious and fraudulent ..." all in violation of Title 18, United States Code §287 and 2 (Petitioner's Exhibit # 3).

6. As a result of said indictment, Respondent was found guilty of 1 Count of Conspiracy to Defraud the Government through Fraudulent Claims and 6 Counts (2 through 7) of "Fraudulent Claims, Aid and Abet" (Petitioner's Exhibit # 4).

7. As a result of said finding of guilt, Respondent was sentenced, on May 12, 1995, to 30 months in Federal Prison, followed by 2 years of supervised release and restitution in the amount of \$300,000.00 (Petitioner's Exhibit # 4).

8. Respondent was convicted of committing acts constituting crimes under Federal Law (Petitioner's Exhibits # 3 & # 4).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the October 26, 1995 Statement of Charges, are SUSTAINED ³:

Paragraph A.

(2 - 8)

The Hearing Committee further concludes, based on the above Factual Conclusion, that the SPECIFICATION OF CHARGES is SUSTAINED.

I Professional Misconduct under §6530(9)(a)(ii) of the Education Law.

The Hearing Committee concludes that the Department of Health has shown, by a preponderance of the evidence, that Respondent was convicted of committing a crime under Federal Law. Respondent's conviction constitutes professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

³ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The record establishes that Respondent was convicted of committing a crime under Federal Law. In essence, Respondent was convicted of submitting fraudulent claims to Medicare, Blue Cross and Blue Shield. Respondent submitted claims, to the above insurance bodies, for services under different titles and procedure codes. He knew that the services that he provided were not covered by insurance.

The record clearly establishes that Respondent committed significant violations of Federal Laws. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, as well as our taxpayers, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

All other issues raised have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

Based on 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**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: New York, New York
April 19, 1996


EDMUND O. ROTHSCHILD, M.D., (Chair),

ROBERT B. BERGMANN, M.D.
MICHAEL A. GONZALEZ, R.P.A.

Teodoro Ando, M.D.
139 Basket Road
Webster, NY 14580

Cleary & Cleary
Thomas P. Cleary, Esq.
Lawley Building
120 Delaware Ave., Suite 425
Buffalo, NY 14202

Dianne Abeloff, Esq.
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

APPENDIX I

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

IN THE MATTER
OF
TEODORO ANDO, M.D.

STATEMENT
OF
CHARGES

TEODORO ANDO, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 10, 1978, by the issuance of license number 133607 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about May 12, 1995, Respondent was found guilty after trial of violating 18 USC 286, conspiracy to defraud the government through fraudulent claims (one Count), and 18 USC 287 and 2, filing false claims with Pennsylvania Blue Shield (six Counts). Respondent was sentenced to 30 months in Federal Prison, followed by 2 years of probation, and restitution in the sum of \$300,000.

SPECIFICATION OF CHARGES

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1995) 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: October 26, 1995
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct