



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen  
*Executive Deputy Commissioner*

December 4, 1998

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Denise Quarles, Esq.  
David Smith, Esq.  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Peter Chavkin, Esq.  
Peter E. Dolotta, Esq.  
Stillman and Friedman, P.C.  
425 Park Avenue  
New York, New York 10022

David E. Steckler, Esq.  
Garfunkel, Wild and Travis, P.C.  
111 Great Neck Road  
Great Neck, New York

### **RE: In the Matter of Fereydoon Abir, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 98-290) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

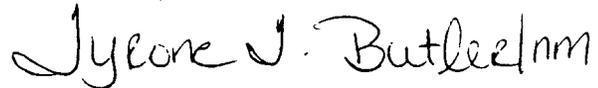
The notice of review served on the Administrative Review Board should be forwarded to:

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,

Handwritten signature of Tyrone T. Butler in cursive script, followed by the initials 'nm'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
FEREYDOON ABIR, M.D.**

**DETERMINATION  
AND  
ORDER**

BPMC-98-290

A Notice of Referral Proceeding and Statement of Charges, both dated August 24, 1998, were served upon the Respondent, **FEREYDOON ABIR, M.D.**

**GERALD BRODY, M.D.**, Chairperson, **NORTON SPRITZ, M.D.** and **STEPHEN WEAR, PH. 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Law officer.

Hearings were held on September 16, 1998, October 2, 1998 and November 12, 1998, at the Offices of the New York State Department of Health, 5 Penn Plaza, New York, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **DENISE QUARLES, ESQ.**, AND **DAVID SMITH, ESQ.**, of Counsel. The Respondent appeared by **STILLMAN AND FRIEDMAN P.C.**, 425 Park Ave. New York, N.Y., by **PETER CHAVKIN, ESQ** and **PETER E. DOLOTTA, ESQ.**, of Counsel, and by **GARFUNKEL, WILD AND TRAVIS, P.C.** 111 Great Neck Road, Great Neck, N.Y. by **DAVID E. STECKLER, ESQ.**, of Counsel. Evidence was received and transcripts of these proceeding 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 the 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 case, a licensee is charged with misconduct based upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if the 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 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.

**WITNESSES**

For the Petitioner:

None

For the Respondent:

1. Bruce Taylor, M.D.
2. Roberto Anon, M.D.
3. Fereydoon Abir, M.D. the Respondent

## 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 the particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise stated.

1. Fereydoon Abir, M.D., the Respondent, was authorized to practice medicine in New York State on September 16, 1974, by the issuance of license number 121310 by the New York State Education Department. (Pet's. Exs. 1 and 2).
  
2. On February 5, 1998, in New York State Supreme Court, Kings County, the Respondent was convicted upon pleading guilty to violating N.Y. Penal Law § 155.35, Attempted Grand Larceny in the Third Degree, a class E felony.

In pleading, the Respondent admitted that the following facts are true:

Between April, 1990, and February, 1994, the Respondent submitted to the Computer Science Corporation, a fiscal agency of the State of New York, numerous claims which falsely represented that he performed certain complex surgical repairs upon Medicaid patients when, in fact, he knew well that he did not perform such repairs.

The court sentenced the Respondent to five (5) years probation and ordered restitution of thirty thousand dollars (\$30,000) to the Medicaid Program. (Pet's. Exs. 3 and 4)

**VOTE OF THE HEARING COMMITTEE**

**SPECIFICATION**

**CRIMINAL CONVICTION IN NEW YORK STATE**

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

**VOTE:**       SUSTAINED (3-0)

## HEARING COMMITTEE DETERMINATION

The Hearing Committee has given consideration to the Respondent's position that his misconduct was caused by his addiction to opiates but determines that this argument is not convincing.

The record indicates that the Respondent began using Hydrocodone for a medical purpose in 1988 or 1989, with continuing increased dosages, until he became addicted in late 1991 or early 1992.

There is absolutely no proof in the record that the Respondent was addicted to opiates in April 1990, when he began submitting false Medicaid billings, nor is there any proof that his continued behavior in submitting false billings up until February, 1994 was caused by his a drug addiction.

However, there are some mitigating factors in the record which the Hearing Committee has taken into consideration in determining the nature and severity of the penalty to be imposed upon the Respondent:

- (a) The Respondent has made restitution of thirty thousand dollars (\$30,000) to the Medicaid Program as ordered by the court.
- (b) The Respondent sought treatment for his drug addiction and is currently drug free.
- (c) The charges in this case do not reflect on the Respondent's competence as a practicing physician.
- (d) The Respondent enjoys the reputation of being an excellent physician with many years of service to an undeserved community with patients who were often unable

to pay. His services included emergency, frequently uncompensated, trauma surgery.

- (e) With the exception of the instant charge, the Respondent's twenty four year medical career has essentially been without blemish and is commendable for its value to the community.
- (f) The Respondent is viewed by his colleagues, even those aware of his criminal conviction, as a highly qualified and committed physician.

After due consideration of the full spectrum of penalties available pursuant to statute, all of the Hearing Committee members agreed that the Respondent's criminal behavior warranted a significant penalty of a five year suspension, staying a portion of the suspension, and placing the Respondent on probation for a period of five years.

One Committee members voted to stay the last 4 years of the suspension, with an actual suspension of 1 year.

Two Committee members voted to stay the last 4 years and 6 months of the suspension, with an actual suspension of 6 months.

The majority felt that the 6 month actual suspension achieved the necessary severity but permitted the Respondent to return to his needed role in the medical community in a more reasonable time with less chance of diminishing his surgical skills.

A penalty in the amount of Ten Thousand Dollars (\$10,000) should be also assessed against the Respondent.

## ORDER

### **THEREFORE: IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for five (5) years, suspension **STAYED** for all but the first six (6) months of the suspension period.
  
2. The Respondent is placed on probation for a period of **FIVE YEARS** under the following conditions:
  - Respondent shall conduct himself in all ways in a manor 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 shall remain drug/alcohol free.
  
  - Respondent shall become active in a self help group such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
  
  - Respondent shall notify all treating physicians of his history of alcohol/chemical dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
  
  - Respondent shall practice only when monitored by qualified health care professional

monitors ("sobriety monitor" , "practice supervisor" and "therapist") proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.

- Respondent shall submit at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drug/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hour of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by the Respondent or a test is positive for any unauthorized substance.
- Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondents sobriety. These reports are to include (a) forensically valid results of all drug/alcohol monitoring test to be performed at a frequency of no less than bi-monthly for the first 12 months of the period of probation, then at a frequency to be proposed by the monitor and approved by the OPMC and (b)an assessment of self- help group attendance (e.g., AA/NA/Caduceus, etc.), 12 step progress, etc.
- Respondent shall practice medicine only when supervised in his medical practice. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. Respondent shall not practice medicine until a practice supervisor has been approved. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.

- Respondent shall cause the practice supervisor to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposing of controlled substance.
- Respondent shall cause the practice supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, perscrbing practice, and compliance or failure to comply with any term of probation.
- Respondent shall continue in counseling or other therapy with a therapist approved by OPMC, as long as the therapist determines is necessary, or for the period of time dictated in the Order.
- Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advise, or displays any symptoms of suspected or actual relapse.
- Any change in the monitoring physician, supervising physician or treating professional shall be reported immediately to OMPC and any successor monitoring physician, supervising physician or treating professional must be approved by the Director of OPMC.
- Respondent shall comply with any request from OPMC to obtain an independent

psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing by the Director of OPMC.

- 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, Fourth Floor, Troy, New York 12180: said notice is to include a full description of any 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, within thirty days of each action.
- Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's 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.
- 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 for a period of (30) consecutive days or more. Respondent shall then 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 term of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
- 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, billing records, interviews with or periodic visit with Respondent and his staff at practice locations or OPMC offices.

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

3. A civil penalty in the amount of Ten Thousand (\$10,000) Dollars is assessed against the Respondent. Payment of the civil penalty shall be due within 60 days of the effective date of this Order.

Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collections by New York State. This includes but is not limited to 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 section 171 (27)]: State Finance Law section 18: CPLR section 5001: Executive Law section 32].

4. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to this Order and shall assume and bear all cost 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.

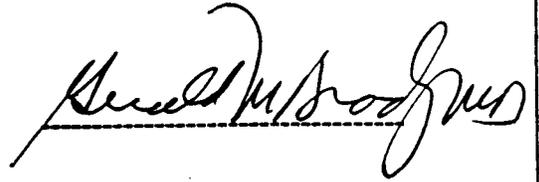
5. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED:

December 2, 1998

Mineda

NEW YORK

A handwritten signature in cursive script, reading "Gerald M. Brody, M.D.", written over a horizontal dashed line.

**GERALD BRODY, M.D.**

**CHAIRPERSON**

**NORTON SPRITZ M.D.  
STEPHEN WEAR, PH. D.**

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

IN THE MATTER  
OF  
FEREYDOON ABIR, M.D.

STATEMENT  
OF  
CHARGES

FEREYDOON ABIR, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 16, 1974, by the issuance of license number 121310 by the New York State Education Department.

FACTUAL ALLEGATIONS

[REDACTED]

[REDACTED]

2. On or about February 5, 1998, in New York State Supreme Court, Kings County, the Respondent was convicted upon pleading guilty to violating N.Y. Penal Law §155.35, Attempted Grand Larceny in the Third Degree, a class E felony. In pleading, the Respondent admitted that the following facts are true:
  - a. Between on or about April of 1990, to on or about February of 1994, the Respondent submitted to the Computer Science Corporation, a fiscal agency of the State of New York, numerous claims which falsely represented that he performed certain complex surgical repairs upon Medicaid patients when, in fact, he knew full well that he did not perform such repairs.
3. The court sentenced the Respondent to:
  - a. five (5) years probation; and
  - b. restitution of thirty thousand dollars (\$30,000) to the Medicaid Program.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**CRIMINAL CONVICTION IN NEW YORK STATE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(i)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under New York State Law, as alleged in the following:

1. The facts in Paragraph A and its sub-paragraphs.

DATED: August 27, 1998  
New York, New York



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional