



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

Dennis P. Whalen
Executive Deputy Commissioner

October 5, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Silvia P. Finkelstein, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Virgiliu Necula, M.D.
168-03 67th Avenue
Fresh Meadows, New York 11365-1909

RE: In the Matter of Virgiliu Necula, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-233) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

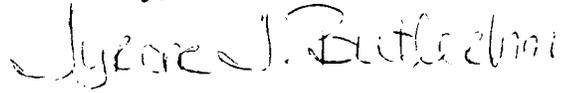
The notice of review served on the Administrative Review Board should be forwarded to:

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".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC-98-233

**IN THE MATTER
OF
VIRGILIU NECULA, M.D.**

A Notice of Referral Proceeding and Statement of Charges, both dated June 7, 1998 were served upon the Respondent, **VIRGILIU NECULA, 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 Officer.

A hearing was held on September 16, 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 **SILVIA P. FINKELSTEIN, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf and was accompanied by his son, **HOZIA NECULA**.

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 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 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 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)(c). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

WITNESSES

PETITIONER:

NONE

RESPONDENT:

Virgiliu Necula, M.D., the Respondent
Hozia Necula, Respondent's Son

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 cited evidence. All Hearing Committee findings were unanimous unless otherwise stated.

1. **VIRGILIU NECULA, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 6, 1978, by the issuance of license number 133365 by the New York State Education Department. (Pet's Ex.4)

2. On September 24, 1996, the Supreme Court of New York, Appellate Division, First Department, issued an order unanimously confirming the Decision After Hearing issued by the Department of Social Services of the State of New York on December 6, 1994, which excluded the Respondent from the Medicaid Program and required the him to pay restitution of \$213,358.00 and determined that the Respondent engaged in illegal fee splitting. In particular, the Respondent, a radiologist, was found to have entered into contracts with management companies, under which the companies were to provide the Respondent with facilities, supplies, equipment and non-physician staff necessary to operate his radiology practice, and he was to pay the companies a fixed percentage of his receipts for billing services and a fixed dollar amount for each procedure performed. This was found to be illegal fee splitting since the Respondent's payments to the companies were a percentage of or otherwise dependent upon his income or receipts .(Pet's Ex.3).

CONCLUSIONS OF THE HEARING COMMITTEE

The Hearing Committee concludes that the Respondent's conduct would constitute professional misconduct under N.Y. Educ. Law 6530(9)(19) (permitting unauthorized persons to share in the fees for professional services including arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment, or personal services used by the licensee constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

HAVING BEEN FOUND GUILTY IN AN ADJUDICATORY PROCEEDING

The Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law 6530(9)(c) (McKinney Supp. 1998) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final determination, and when no appeal is pending, when the violation would constitute professional misconduct under the laws of New York.

VOTE: SUSTAINED (3-0)

DETERMINATION OF THE HEARING COMMITTEE

The Respondent, a native of Romania, has practiced radiology in New York State for twenty (20) years, and except for the charges under consideration, he has had a distinguished and unblemished medical career.

The Hearing Committee has had an opportunity to observe the Respondent, to ask him questions and to listen to his responses. It was apparent that the Respondent has some difficulties with the subtleties of the English language. Several times he relied on his son for clarification.

The Hearing Committee is convinced that the Respondent may not have fully appreciated the import of the arrangement he entered into with the management companies which are the source of his current difficulties.

The charges in this case do not reflect on the Respondent's competence as a practicing physician and represent only a small part of his medical activities. Overall, his medical career has been commendable for its educational value and its value to the community.

The Hearing Committee is convinced of the Respondent's sincerity and believes that he will never again enter an arrangement which would give rise to even a suspicion of impropriety.

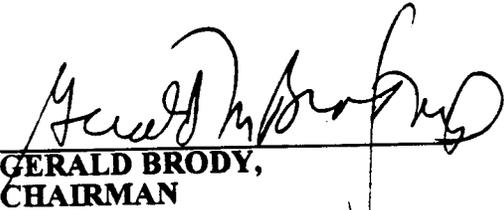
Based on the foregoing the Hearing Committee determines unanimously (3-0) that, in the interest of justice, no action should be taken against the Respondent's license to practice medicine in the State of New York.

ORDER

IT IS HEREBY ORDERED THAT:

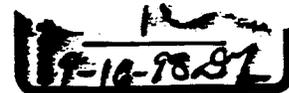
1. No action is to be taken against the Respondent's license to practice medicine in New York State.
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Tuckahoe, New York
October 2, 1998


GERALD BRODY,
CHAIRMAN

NORTON SPRITZ
STEPHEN WEAR, PH.D.

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



IN THE MATTER
OF
VIRGILIU NECULA, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Virgiliu Necula, M.D.
168-03 67th Avenue
Fresh Meadows, New York 11365-1909

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. 1998) 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 July 22, 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
June, 7 1998



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

**Silvia P. Finkelstein
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
VIRGILIU NECULA, M.D.

STATEMENT
OF
CHARGES

VIRGILIU NECULA, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 6, 1978, by the issuance of license number 133365 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 24, 1996, the Supreme Court of the State of New York, Appellate Division, First Department, issued an order unanimously confirming the Decision After Hearing issued by the Department of Social Services of the State of New York on December 6, 1994, which excluded Respondent from the Medicaid Program and required him to pay restitution of \$213,358 and determined that Respondent engaged in illegal fee splitting. In particular, Respondent, a radiologist, was found to have entered into contracts with management companies, under which the companies were to provide Respondent with facilities, supplies, equipment and nonphysician staff necessary to operate his radiology practice, and petitioner was to pay the companies a fixed percentage of his receipts for billing services and a fixed dollar amount for each procedure performed. This was found to be illegal fee splitting since Respondent's payments to the companies were a percentage of or otherwise dependent upon his income or receipts. Respondent's conduct

would constitute professional misconduct under N. Y. Educ. Law §6530(9)(19) (permitting unauthorized persons to share in the fees for professional services including any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment, or personnel services used by a licensee constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice).

SPECIFICATION OF CHARGES

SPECIFICATION

HAVING BEEN FOUND GUILTY IN AN ADJUDICATORY PROCEEDING

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(c)(McKinney Supp. 1998) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final determination, and when no appeal is pending, when the violation would constitute professional misconduct under the laws of New York, as alleged in the facts of the following:

1. The facts in Paragraph A.

DATED: June 9, 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct