



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

January 8, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Stein, Esq.
NYS Department of Health
5 Penn Plaza Sixth Floor
New York, New York 10001

Nathan L. Dembin, Esq.
225 Broadway
Suite 1400
New York, New York 10007

Angelo J. Volpe, M.D.
11 Priory Court
Melville, New York 11747

RE: In the Matter of Angelo John Volpe, M.D.

Dear Mr. Stein, Mr. Dembin and Dr. Volpe:

Enclosed please find the Determination and Order (No. 97-14) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

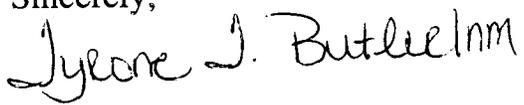
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink that reads "Tyrone T. Butler nm". The signature is written in a cursive style with a large initial "T" and a trailing "nm" at the end.

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-
ANGELO JOHN VOLPE, M.D.
Respondent

DETERMINATION

AND

ORDER

BPMC-97-14

A Notice of Referral Proceeding and Statement of Charges, dated October 4, 1996, were served upon the Respondent, Angelo John Volpe, M.D. **JERRY WAISMAN, M.D. (Chair), RANDALL GRIEPP, M.D. and GEORGE SIMMONS, Ed.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. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Paul Stein, Associate Counsel. The Respondent appeared in person and was represented by Nathan L. Dembin & Associates, Nathan L. Dembin, Esq. of Counsel. Evidence was received, statements were heard 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). This statute provides for an expedited proceeding where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(a)(ii) (convicted of committing an act which constitutes a crime under federal law). The charges herein arise from the Respondent pleading guilty to committing medicare fraud. The Respondent was involved in a conspiracy wherein false claims for durable medical equipment and claims for patients who did not receive medical care were submitted to the Medicare Program. The allegations in this proceeding are more particularly set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix One.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to 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. Angelo John Volpe, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on October 17, 1983, by the issuance of license number 156331 by the New York State Education Department. (Pet. Exs. 1&2).

2. On or about July 14, 1995, the Respondent plead guilty in the United States District Court, Southern District of New York, to one count of violating Section 1320a-7b(a)(2) of Title 42 of the United States Code thereby violating Section 371 of Title 18 of the United States Code (Conspiracy to commit offense or to defraud United States). (Pet. Exs. 3, 5 & 7)

3. On or about March 8, 1996 the Respondent was sentenced to 12 months imprisonment, 3 years of supervised release and ordered to pay \$87,000.00 in restitution. (Pet. Ex. 6 & 7)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was convicted of committing a crime under federal law.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be **suspended subsequent to which his license shall be placed on probation**. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee based its determination on the fact that the Respondent withdrew from the medicare fraud scheme on his own volition. This was not a case where the Respondent learned of his being a subject of an investigation and then ceased the fraudulent activity. Additionally the Respondent's illegal monetary gain was limited to his reimbursement for the fraudulent office visits. He did not receive a share of the illegally obtained medicare reimbursement for the durable medical equipment which represented the major share of the fraudulently obtained monies. The Hearing Committee found that the Respondent has admitted his guilt and has accepted responsibility for his actions and does not believe that revocation is warranted in this case. The Hearing Committee believes that the sanction of suspension with a substantial period of probation would adequately protect the public interests in this instance.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED**, the terms of which are set forth in APPENDIX II attached hereto and made a part hereof.

3. Respondent is placed on **PROBATION** for a period of **FOUR (4)** years in accordance with the terms set forth in Appendix II, attached hereto and made apart hereof.

DATED: New York, New York

1/6, 199**5**


JERRY WAISMAN, M.D. (CHAIR)

Randall Griep, M.D.
George Simmons, Ed.D.

TO: Paul Stein, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Nathan L. Dembin, Esq.
225 Broadway
Suite 1400
New York, New York 10007



Angelo J. Volpe, M.D.
11 Priory Court
Melville, New York 11747

APPENDIX I

IN THE MATTER

OF

ANGELO JOHN VOLPE, M.D.

STATEMENT

OF

CHARGES

ANGELO JOHN VOLPE, M.D., the Respondent, was authorized to practice medicine in New York State on October 17, 1983 by the issuance of license number 156331 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. 1. On or about July 14, 1995, in United States District Court for the Southern District of New York, in Case No. S1 95 CR 362 (KMW), before the Hon. Kimba M. Wood, Respondent pled guilty to Count One of an Information filed July 14, 1995 charging Respondent with criminal acts of conspiring to commit an offense against the United States, to wit, to violate Title 42 United States Code Section 1320a-7b(a)(2), by making false claims to the Medicare program, thereby violating 18 U.S.C. Section 371.
2. On or about March 8, 1996, in United States District Court for the Southern District of New York, in Case No. S1 95 CR 362 (KMW), before the Hon. Kimba M. Wood, Respondent was sentenced to: a twelve month period of imprisonment; a three year period of supervised release; and \$87,000.00 in restitution.

SPECIFICATIONS

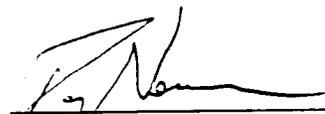
FIRST SPECIFICATION

CONVICTION OF ACT CONSTITUTING A CRIME UNDER FEDERAL LAW

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(a)(ii) (McKinney Supp. 1996), in that he was convicted of committing an act constituting a crime under federal law, as Petitioner specifically alleges:

1. The facts in Paragraphs A1-2.

Dated: New York, New York
October 4, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

TERMS OF SUSPENSION

The Respondent's license to practice medicine in New York is suspended for a period of five(5) years. This suspension will be stayed except for that period of time which coincides with the Respondent's term of imprisonment pursuant to the judgment in Criminal Case Number: S1 95 Cr 362-07 KMW, in the United States District Court, Southern District of New York and shall end upon the Respondent's release from prison.

TERMS AND CONDITIONS OF PROBATION

The Respondent's license to practice medicine in New York is placed on probation for a period which will coincide with the probationary time period imposed on the Respondent's license to practice medicine by the State of Connecticut and will end when said Connecticut probation ends. Upon commencement of the probationary period the following conditions shall be in effect:

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent shall submit prompt (within 20 days) written notification to the Board, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. During the period of probation, the Director of the Office of Professional Medical Conduct or designee, may review the professional performance of the Respondent. This review may include but not be limited to a random selection of the office records, patient records or hospital charts, interviews with or periodic visits with the Respondent and his/her staff at the practice location(s) or one of the offices of the Office of Professional medical Conduct, Hedley Park Place, 433 River Street, 4th Floor, Troy, New York 12180.

5. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.
6. If the Respondent resumes the practice of medicine in a non-clinical setting or not in the field of pediatrics in a medically underserved area, he must perform five (5) hours of community service per week for the period of probation. The Respondent's resumption of the practice of medicine in the field of pediatrics in a medically underserved area shall fulfill the community service requirement of probation. Any community service performed to fulfill the terms of probation must be approved by the Director of OPMC.
7. Respondent's practice of medicine shall be monitored by a physician monitor, board certified in an appropriate specialty, ("Practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct or designee. The Practice Monitor shall not be an employee of or be affiliated with Respondent's employer. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of a proposed practice monitor will be determined to be a violation of probation.
 - a. The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or designee, on a schedule to be determined by the office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis at least quarterly and shall examine a random (no less than 15) selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall immediately be reported to the Office of Professional Medical Conduct by the monitor.
 - b. Any change in practice monitor must be approved in writing, in advance, by the Office of Professional Medical Conduct.
 - c. All expenses associated with monitoring, including fees to the monitoring physician, shall be the sole responsibility of the Respondent.
 - d. It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice

monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.

- e. Respondent must maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director or designee prior to the placement of a practice monitor.