



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 7, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Anton R. Onorato, M.D.
19 Winterberry Court
Peekskill, New York 10566

Carolyn Shearer, Esq.
Bond, Schoeneck & King
111 Washington Avenue
Albany, New York 12210-2211

Anton R. Onorato, M.D.
955 Yonkers Avenue
Yonkers, New York 10704

RE: In the Matter of Anton R. Onorato, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-200) 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.

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.

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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

**IN THE MATTER
OF
ANTON R. ONORATO, M.D.**

DETERMINATION

AND

ORDER

BPMC #01-200
COPY

A Notice of Referral Proceeding and a Statement of Charges, both dated May 14, 2001, were served upon the Respondent, **Anton R. Onorato, M.D.** **Sharon Kuritzky, M.D.**, Chairperson, **Arsenio G. Agovovich, M.D.**, and **Mr. Peter S. Koenig, Sr.**, duly designated members of the State Board for Professional Medical Conduct ("the Board"), served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on August 23, 2001, at the offices of the New York State Department of Health ("the Petitioner"). The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by Bond, Schoeneck & King, 111 Washington Avenue, Albany, New York 12210-2211, **Carolyn Shearer, Esq.**, of Counsel.

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 when 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 a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if 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)(ii). A copy of the Notice of Referral Proceeding and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Anton A. Onorato, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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.

1. Anton R. Onorato, M.D., the Respondent, was authorized to practice medicine in New York State on September 15, 1975, by the issuance of license number 125212 by the New York State Education Department (Petitioner's Ex. 4).

2. On January 12, 2000, in the United States District Court, Southern District of New York, the Respondent was found guilty of violating 18 USC 1014, Submission of False Statement on Loan Application, and was sentenced to four months imprisonment, followed by five years of supervised release with four months of home confinement, an assessment of \$100.00, and restitution of \$204,587.00 (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted of a felony, Submission of False Statement on Loan Application. The false statement on the application was a statement of the revenues of the Respondent's medical practice that was much higher than the actual amount. The Respondent was sentenced to prison for four months followed by five years of supervised release and four months of home confinement. He also was required to pay a \$100.00 assessment and to make restitution of \$204,587.00 to the lender.

The Petitioner argued that honesty and integrity are essential to the practice of medicine and that, therefore, a revocation of the Respondent's medical license is justified. The Hearing Committee, although it agrees with the Petitioner that this felony conviction is a serious infraction of the Respondent's responsibilities, has determined for several reasons that a lesser penalty will be imposed.

The Hearing Committee, upon listening to the Respondent's testimony and observing his demeanor during his testimony, is convinced that the Respondent is unlikely ever to commit this crime again or any crime of a similar nature. The ordeal of

the criminal law process and imprisonment have left a lasting impression on the Respondent. He also convinced the Hearing Committee that he is truly remorseful for his wrongdoing.

The Hearing Committee also concludes that the Respondent's crime was motivated by financial desperation, not greed. This, of course, does not excuse the crime, but it is a mitigating factor.

The Petitioner noted that the loan was obtained by the Respondent through his medical practice and argued that the crime was directly related, therefore, to his practice of medicine. The Hearing Committee notes that the loan, nonetheless, was for the payment of the Respondent's preexisting personal debts and personal financial obligations and had no relationship to the treatment of patients or billing for the treatment of patients.

The Petitioner noted that the Respondent testified in this hearing that his loan advisor put the false information in the loan application and that the Respondent did not know at the time of the loan application what the false information was. The Petitioner argued that this is not credible and that the Respondent would not have pled guilty to a felony had he not known what information was put in the application by the loan advisor. The Petitioner claimed that this testimony proved that the Respondent was still dishonest and that this supported the recommendation of a revocation of the Respondent's medical license.

This argument mischaracterizes the Respondent's testimony. The Respondent freely admitted that he knew that the loan advisor was going to put false information in the loan application to increase the chances of obtaining the loan. The Respondent freely admitted in his testimony that he authorized the loan advisor to do so. He accepted full responsibility for this criminal act. He did testify that the loan advisor did not tell him prior

to the submission of the application to the lender what the false information would be, but there was no attempt in the Respondent's testimony to pretend that he did not know the nature of what was going to happen. The Respondent's testimony was not intended to mislead the Hearing Committee or to portray the Respondent's role in the crime as anything less than what it actually was.

Given all these factors, a stayed suspension of the Respondent's license and probation, as detailed below, are sufficient protection for the people of New York State.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is suspended for the duration of the Respondent's supervised release in the criminal court proceeding. This suspension is stayed and will remain stayed for as long as the Respondent complies with the terms of probation imposed by this Order.

2. The Respondent is placed on probation. The period of probation will terminate upon termination of the Respondent's supervised release in the criminal court proceeding.

3. The 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 and obligations imposed by law and by his profession. If the Respondent commits professional misconduct as enumerated in New York State Education Law Sections 6530 or 6531, those acts shall be deemed to be a violation of probation and an action may be taken by the Office of Professional Medical Conduct ("OPMC") against the Respondent's license pursuant to New York State Public Health Law Section 230(19).

4. No later than thirty days after the effective date of this Order, the Respondent shall submit written notification to the New York State Department of Health,

Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Suite 303, Troy, New York 12180-2299; 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 pending investigations, charges, criminal proceedings or disciplinary actions by any local, state or federal agency, institution or facility. The description of employment must be sufficiently detailed to allow OPMC to determine the legality of the nature of the employment and the financial arrangements related to the employment. Changes in employment, medical practice, address or telephone number must be reported within thirty days of the change. New investigations, charges, criminal proceedings and disciplinary actions must be reported within thirty days of the date that the Respondent is notified of the existence of the investigation, charges, criminal proceedings or disciplinary actions.

5. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order. The Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

6. The Respondent shall comply with all terms and conditions to which he is subject pursuant to this Order and shall assume and bear all costs 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 the Respondent as may be authorized pursuant to the law.

7. 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: Amherst, New York

September 5, 2001



Sharon Kuritzky, M.D.
Chairperson

Arsenio G. Agopovich, M.D.
Peter S. Koenig, Sr.

APPENDIX I

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

IN THE MATTER

OF

**ANTON R. ONORATO, M.D.
CO-00-09-4092-A**

NOTICE OF

REFERRAL

PROCEEDING

TO: ANTON R. ONORATO, M.D.
19 Winterberry Court
Peekskill, NY 10566

ANTON R. ONORATO, M.D.
955 Yonkers Avenue
Yonkers, NY 10704

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 18th day of June 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of



Adjudication”) as well as the Department of Health attorney indicated below, on or before June 8, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 8, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

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: Albany, New York

May 14, 2001



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

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

IN THE MATTER
OF
ANTON R. ONORATO, M.D.
CO-00-09-4092-A

STATEMENT
OF
CHARGES

ANTON R. ONORATO, M.D., the Respondent, was authorized to practice medicine in New York state on September 15, 1975, by the issuance of license number 125212 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about ^{May 12,} ~~October 20,~~ 2000, in the United States District Court, Southern District of New York, Respondent was found guilty of violating 18 USC 1014, Submission of False Statement on Loan Application, and was sentenced to four (4) months imprisonment, five (5) years supervised release upon release from imprisonment with four (4) months home confinement, and pay a \$100.00 assessment and \$204, 587.00 restitution.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in paragraphs A.

DATED: May 14, 2001
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 of Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding. Pursuant to Public Health Law §230, the Notice of Hearing must, additionally, specify that the licensee shall file a written answer.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer or Responsive Pleading. A party may serve an answer or response to the allegations of the Department. In matters governed by PHL §230, the licensee is required to file a written answer to each of the charges and allegations of the Department. Under the law, any charge or allegation which is not so answered shall be deemed admitted.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, document or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure of a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as is practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any

time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of the claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer or Hearing Committee Report. The report or determination should be submitted within 60 days of completion of the hearing.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order any party may submit exceptions to said report and proposed order

to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed. Pursuant to PHL 230(c), a notice of request for review of the Hearing Committee determination must be served upon the ARB within 14 days of service of the determination. All parties have 30 days thereafter to submit briefs and 7 days from service of a brief to submit a reply.

51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

51.16 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public Health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York
March 10, 1997


HENRY M. GREENBERG
General Counsel