



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

August 26, 1994

Paula Wilson
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcel Bristol, R.P.A. No. 93-R-9929
Wyoming Correctional Facility
Box 501
Attica, New York 14011

REC'D
AUG 26 1994

Ralph Bavaro, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Marcel Bristol, R.P.A.

Dear Mr. Bristol and Mr. Bavaro :

Enclosed please find the Determination and Order (No. 94-166) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
MARCEL BRISTOL , R.P.A.**

**DETERMINATION
AND
ORDER**
No. BPMC-94-166

A Notice of Hearing and Statement of Charges, both dated May 5, 1994, were served upon the Respondent, Marcel Bristol, R.P.A. **STEVEN W. HORNYAK, M.D.** (Chair), **RAFAEL LOPEZ, M.D.**, and **CAROL LYNN HARRISON, 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. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on June 15, 1994. The Department of Health appeared by **RALPH BAVARO, ESQ.**, Associate Counsel. The Respondent failed to appear in person and was not represented by counsel. Evidence was received and witnesses sworn and 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). The statute provides for an expedited hearing 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 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 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 Section 6530(9)(a)(i). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

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 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 the cited evidence.

1. Respondent was authorized to practice as a physician assistant in New York State on January 9, 1986 by the issuance of license number 002892 by the New York State Education Department. (Pet. Ex. 2)

2. On November 22, 1993, in New York State Supreme Court, County of Kings, Respondent was convicted of the following: one count of grand larceny in the second degree; three counts of forgery in the second degree; six counts of criminal possession of a forged instrument in the second degree; and four counts of criminal impersonation in the second degree. (Pet. Ex. 3)

3. As a result of the conviction, Respondent was sentenced to the following respective terms of imprisonment for those crimes, to run concurrently: Three to nine years; two to six years; two to six years; one year. Respondent was also ordered to pay restitution and costs in the amount of eighty-two thousand, four hundred fourteen dollars (\$82,414). (Pet. Ex. 3, 6)

CONCLUSIONS OF LAW

The following conclusion 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 unanimously concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates that Respondent was convicted of grand larceny, forgery, criminal possession of a forged instrument, and criminal impersonation, all in violation of the New York Penal Code. Education Law Section 6530(9)(a)(i) defines professional medical misconduct as " being convicted of committing an act constituting a crime under New York State law." As a result, the Hearing Committee voted to sustain the First Specification of professional misconduct contained within the Statement of Charges.

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 registration to practice as a physician assistant should be revoked. 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.

Respondent was convicted of numerous crimes involving fraud against Medicaid and has been incarcerated and ordered to make restitution.. Despite his incarceration, Respondent failed to neither retain counsel to appear on his behalf nor make an attempt to present any evidence which might mitigate the sanction to be imposed. The nature of Respondent's misconduct demonstrates his disregard for the law and his lack of ethics and morals as a health care professional. In addition, the Hearing Committee believes that crimes against the Medicaid system have a serious impact upon the quality of the health care system in the State of New York. The Hearing Committee is further obliged to protect the public interest from fraud against Medicaid and to deter Respondent and other physician assistants from future acts of professional misconduct of this nature. Therefore, revocation is the only suitable alternative.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and

2. Respondent's registration to practice as a physician assistant in New York State is hereby **REVOKED**.

DATED: Albany, New York

August 22, 1994


STEVEN W. HORNYAK, M.D.
Chairperson

RAFAEL LOPEZ, M.D.
CAROL LYNN HARRISON, Ph.D.

TO: Ralph Bavaro, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza , 6th Floor
New York, New York 1000

Marcel Bristol, R.P.A, No. 93-R-9929
Wyoming Correctional Facility
Box 501
Attica, NY 14011

APPENDIX I

6-15-94
EX 10 END
C

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

-----X	:	
	:	NOTICE OF
IN THE MATTER	:	
	:	REFERRAL
OF	:	
	:	PROCEEDING
MARCEL BRISTOL, No. 93-R-9929	:	
-----X	:	

TO: MARCEL BRISTOL, No. 93-R-9929
Wyoming Correction Facility,
Box 501
Attica, NY 14011

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 15th day of June, 1994 at 3:00 o'clock in the afternoon of that day at 5 Penn Plaza, 6th 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 5, 1994 .

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 5, 1994 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 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
May 5, 1994



CHRIS STERN HYMAN
COUNSEL
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Ralph J. Bavaro
Associate Counsel ,
(212) 613-2601

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

-----X

IN THE MATTER : STATEMENT
OF : OF
MARCEL BRISTOL, P.A. : CHARGES

-----X

MARCEL BRISTOL, P.A., the Respondent, was authorized to practice as a physician's assistant in New York State on January 9, 1986 by the issuance of license number 002892 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 from 157 Long Beach Boulevard, Long Beach, New York 11561-4234.

FACTUAL ALLEGATIONS

- A. On or about November 22, 1993, in New York State Supreme Court, County of Kings, Respondent was convicted of the following: one count of grand larceny in the second degree; three counts of forgery in the second degree; six counts of criminal possession of a forged instrument in the second degree; and, four counts of criminal impersonation in the second degree. Respondent was sentenced to the following

respective terms of imprisonment for those crimes, to run concurrently: three to nine years; two to six years; two to six years; one year. Respondent was also ordered to pay restitution and costs in the amount of , eighty two thousand, four hundred fourteen dollars (\$82,414).

FIRST SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(i) in that he has been convicted of a crime under New York State law. Petitioner charges the facts alleged in paragraph A.

DATED: New York, New York

May 5, 1994


CHRIS STERN HYMAN
COUNSEL
Bureau of Professional Medical
Conduct

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

-----X

IN THE MATTER :
OF : AFFIDAVIT
MARCEL BRISTOL, P.A. : OF
RESPONDENT. : SERVICE

-----X

STATE OF NEW YORK)
ss:
COUNTY OF WYOMING)

Janet L. Spencer, being duly sworn, states:

1. I am over eighteen years of age and am not a party to the above-captioned proceeding.
2. I am employed by the New York State Department of Corrections as a Inmate Record Coordinator II.
3. On May 13, 1994 at 12:45 (~~xxx~~, p.m.) at the Wyoming Correctional Facility, Attica, New York, I served the annexed Notice of Referral Proceeding and Statetment of Charges upon Marcel Bristol, Respondent named therein, by personally delivering a true copy of each to said Respondent. I knew the person so served to be the person described as the Respondent therein.
4. A description of the person so served is as follows:
Apx. age 40; Apx. weight 155; Apx. height: 5'5";
Sex Male; Skin Color: Brown; Hair Color: Black

Janet L. Spencer
SIGNATURE

Sworn to before me
on this 13 day of
May, 1994

Margaret P. Johnson

Margaret P. Johnson
Notary Public, State of New York
Qualified in Wyoming County
My Commission Expires 10/31/95
4831098