



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*

March 3, 1998

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Bradley C. Mohr, Esq.  
NYS Department of Health  
Corning Tower - Room 2509  
Empire State Plaza  
Albany, New York 12237

Allen C. Pomerantz, M.D.  
60 Westbrook Way  
Manalapan, New Jersey 07726

Andrew B. Schultz, Esq.  
3000 Marcus Avenue, Suite 3WA  
Lake Success, New York 11042

Rev. Thomas Kormmeyer  
P.O. Box 547  
Malone, New York 12953

**RE: In the Matter of Allen Charles Pomerantz, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 98-45) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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" followed by a flourish.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:lcc  
Enclosure

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

**COPY**

**IN THE MATTER**  
**-OF-**  
**ALLEN CHARLES POMERANTZ, M.D.**

**DECISION**  
**AND**  
**ORDER**  
**OF THE**  
**HEARING**  
**COMMITTEE**  
**BPMC-98-45**

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated July 16, 1997 which were served upon ALLEN CHARLES POMERANTZ, M.D., (hereinafter referred to as "Respondent"). WILLIAM P. DILLON, M.D., Chairperson, MARGARET T. COLGAN, M.D., and GEORGE COUPERTHWAIT, JR., 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. JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as the Administrative Officer.

A hearing was held on February 11, 1998 at The Hedley Building, Troy, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by HENRY M. GREENBERG, ESQ., General Counsel, by BRADLEY C. MOHR, ESQ., Assistant Counsel, Bureau of Professional Medical Conduct. Respondent appeared in person an by ANDREW B. SCHULTZ, ESQ. Evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

## **PRELIMINARY STATEMENT**

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530(9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(c) (having been found guilty after an administrative proceeding of a violation of state law). The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

## **FINDINGS OF FACT**

The Committee adopts the factual statements set forth on page one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein. In addition, the dissenting panel member takes notice that Respondent received his medical education in Grenada. The dissenting panel member also takes notice that radiologists typically earn more than \$120,000 per year.

**CONCLUSIONS**  
**WITH REGARD TO**  
**FACTUAL ALLEGATIONS**  
**SPECIFICATIONS**  
**AND**  
**PENALTY**

As a matter of law, it is the ruling of the Administrative Law Judge that pursuant to Section 230 (10)(p), Respondent's failure to submit an answer constitutes an admission of all charges and allegations in the Notice of Referral Proceeding and Statement of Charges (Exhibit 1). In addition, it was the unanimous opinion of this Committee that Petitioner herein had proven by a preponderance of the evidence that Respondent was found guilty after an administrative proceeding, of violating state law. Petitioner was also found to have proven that Respondent was determined by the New York State Department of Social Services to be guilty of "fee splitting" and "unacceptable practices" and to have been responsible for the theft of over \$600,000 from the Medicaid program. This administrative finding was affirmed by the Appellate Division of New York Supreme Court, First Department. Petitioner has also established that the conviction falls under the definition of Professional Misconduct at Section 6530 (19) Therefore, the Factual Allegations and Specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

The decision as to penalty in this matter was not unanimous. Dr. Dillon and Mr. Couperthwait formed the majority and voted for revocation. Dr. Colgan agreed that the State had met its burden of proof but that a lesser penalty should be imposed. The findings of the majority will be presented first followed by the dissenting opinion.

The majority found this case to be a straight forward matter of planned theft from the government based upon greed. The acts committed by Respondent did not constitute the violation of technical regulations or obscure concepts. Respondent was not an innocent bystander nor the victim of manipulation by an unscrupulous business person. Respondent was found by the New York State Department of Social Services to be guilty of fee splitting and unacceptable Medicaid practices. He stole over \$600,000 from the

government. He accomplished the theft by giving his Medicaid identification, not to another physician or bookkeeper, but rather to a business entrepreneur. When the Medicaid payments were made by the state, Respondent endorsed each check to his partner in the scheme. The transfer of the Medicaid number combined with the necessity for endorsement of each and every check is conduct which involves planning, decision making and prior thought. It was not a compulsive act but rather a long term course of conduct.

The majority utterly rejects Respondent's plea for leniency. The majority takes notice that Respondent is proud that medicine is his second career. He was originally a New York City school teacher. While graduation from medical school after beginning another career is a significant accomplishment, it is not the basis for leniency. Rather, the majority sees this as providing Respondent with a depth of background which should have led to maturity and a basic understanding of appropriate conduct. Hence, Respondent's claim that he was befuddled in his administrative duties is disingenuous. Respondent was not a naive recent medical school graduate. Furthermore, Respondent's efforts to associate his conduct with poor administrative abilities is devoid of merit. To achieve the theft which is in question, Respondent had to know exactly what he was doing. The only plausible reasons for his conduct are avarice and greed.

It is the opinion of the majority that the kind of wrongful conduct established herein goes to the very heart of medical practice. The practice of medicine requires far more than clinical talent. Physicians, solely by virtue of their licensure, are given opportunities and privileges that are not available to the public at large. This case highlights one of those privileges: Physicians are given great latitude in charging the public and third party payors for their services. Concomitant with the privileges that flow solely from licensure as a physician, is a fiduciary duty to the public which has granted that license. The public has a right to expect a physician to provide accurate and truthful claims for services rendered. When a person uses his license to practice medicine as a vehicle to steal from the government, it is a violation of the trust bestowed upon the physician by the public. Such a violation of trust tarnishes the entire medical profession by making the public skeptical of all physicians.

Respondent has violated the duty of trust that arises solely upon ones license to practice medicine. He is a mature and worldly individual who was expected to be able to differentiate what is clearly right from what is clearly wrong. He acted in a premeditated manner over a period of time. His misconduct required repeated actions and hence gave him repeated actions to stop. The rules which Respondent broke are fundamental standards of business conduct rather than obscure rules of Medicaid Reimbursement. As of the date of this hearing, Respondent has expressed no remorse or guilt. Rather, he has blamed his misdeeds on his partner in this scheme. Furthermore, Respondent complains that although he obtained only part of the wrongful gain, the authorities have held him liable for the entire amount of the theft. The majority points out that but for the unlawful and inappropriate transfer by Respondent of his Medicaid number, his associate in this scheme could not have filed any claims with the government. Ultimately, the majority finds no evidence of repentance or likelihood of rehabilitation. It appears that Respondent's sole regret is that he was caught. Such activity combined with Respondent's attitude cannot be tolerated by the medical community. Revocation is the only logical outcome which will protect the public from further theft as well as send a message that such conduct will not be tolerated.

Turning now to the opinion of the minority, it was the opinion of Dr. Colgan that Respondent 's license to practice medicine should not be revoked. Rather, Respondent should be placed on probation and allowed to provide restitution of the amount stolen plus interest over a lengthy period of time. In reaching this opinion, the minority concluded that respondent did not believe that what he was doing constituted theft or wrongdoing. The minority found Respondent's transfer of his Medicaid number to a non-physician entrepreneur to be improper and extremely foolish. However, it was the minority opinion that such conduct was not so obviously wrong or illegal as to rise to the level of medical misconduct. It was the opinion of the minority that having been trained in Grenada, Respondent was not as conversant with the concepts of appropriate medical business conduct as one would expect from the graduate of an American medical school. The minority was interested in how Respondent would define fee splitting given the nature of his training.

That is, it was the opinion of the minority that Respondent did not recognize his activities as fee splitting as that is defined in this state. Furthermore, while conducting a private practice in New Jersey, it was the minority view that Respondent was isolated from collegial advice that could have alerted him to the inappropriate nature of his conduct. The minority opinion also considered the fact that these events occurred in 1990 which is seven years ago.

Dr. Colgan also pointed out that Respondent charged only \$12 for each service. The minority view is that this is an extremely inexpensive charge compared to the charges of most radiologists. Dr. Colgan pointed out that Respondent accrued approximately \$120,000 in the year long course of this conduct. In the opinion of Dr. Colgan, this is an extremely modest salary for a radiologist. Dr. Colgan also called the panel's attention to the fact that Respondent declared the income from the scheme and paid income tax on it. Finally, Dr. Colgan perceived no possibility that Respondent would repeat his unlawful acts.

**ORDER**

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the state of New York is hereby **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

4. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated: Buffalo, New York  
Feb. 27, 1998

  
WILLIAM P. DILLON, M.D., Chairperson

MARGARET T. COLGAN, M.D.  
GEORGE COUPERTHWAIT, JR.

(FR)

TO:  
**BRADLEY C. MOHR, ESQ.**  
Assistant Counsel,  
Bureau of Professional Medical Conduct  
Corning Tower  
Albany N.Y. 12237

**ALLEN C. POMERANTZ, M.D.**  
60 Westbrook Way  
Manalapan, New Jersey 07726

**REV. THOMAS KORNMEYER** (OPMC observer)  
P.O. Box 547  
Malone, New York 12953

**ANDREW B. SCHULTZ, ESQ.**  
3000 Marcus Ave. Suite 3WA  
Lake Success, New York 11042

**APPENDIX ONE**

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

-----X

IN THE MATTER : NOTICE OF  
OF : REFERRAL  
ALLEN CHARLES POMERANTZ, M.D. : PROCEEDING

-----X

TO: ALLEN CHARLES POMERANTZ, M.D.  
60 Westbrook Way  
Manalapan, New Jersey 07726

STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
DEPT.  RESPT.  EXHIBIT   
ID  EVD   
DATE.....INITIALS.....

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 11th day of February, 1998, 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 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

EXHIBIT  
1 & Id  
MLP 2/11/98

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, 5th Floor, 433 River Street, Troy, New York 12180, 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 February 4, 1998.

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 or 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 February 4, 1998, 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  
January 7, 1998



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

Inquiries should be addressed to:

Bradley Mohr  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2509  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
ALLEN CHARLES POMERANTZ, M.D. : CHARGES

-----X

ALLEN CHARLES POMERANTZ, M.D., the Respondent, was authorized to practice medicine in New York State on July 23, 1984 by the issuance of license number 159301 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine, with a registration address of 60 Westbrook Way, Manalapan, New Jersey 07726.

**FACTUAL ALLEGATIONS**

1. Respondent, on or about December 28, 1994, was convicted in an adjudicatory proceeding by the New York State Department of Social Services, (Case # FH 2009545) of unacceptable practices and receipt of overpayments in the Medical Assistance Program (Medicaid) through participation in an illegal fee splitting arrangement and receiving overpayments in the sum of \$672,819 in violation of the following provisions of New York law and regulations: Education Law §6530(19), 8 NYCRR 29.1(b)(4), 18 NYCRR 515.2, 515.3, 518.1(b)(c), 518.3(a)(c). Respondent was excluded from participation in the Medicaid program for 5 years

and was ordered to make restitution of overpayment in the amount of \$672,819.

2. Respondent's appeal of his conviction was denied and the December 28, 1994, determination of the Department of Social Services was unanimously confirmed by the Appellate Division on June 11, 1996, Matter of Pomerantz, 228 AD 2d 242, (First Dept.1996), 644 NYS 2d 24.

3. Respondent's conduct consisted of handing over his Medicaid provider number to a non-medical entrepreneur who would not otherwise be able to submit bills to the Medicaid Program. He then split the proceeds with her in violation of his responsibilities both as a physician and as a Medicaid Provider. He is responsible for causing an overpayment of Medicaid funds in the amount of \$672,819. He received the \$672,819 in the form of checks from the Medicaid Program, payable to him, which he then shared with others in connection with a scheme to violate state law and Medicaid rules. Respondent has not made restitution.

#### SPECIFICATION

#### FIRST SPECIFICATION

#### CONVICTION OF A VIOLATION OF THE LAW

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(c), in that he was

found guilty in an adjudicatory proceeding of violating a state statute or regulation which would constitute professional misconduct under the laws of New York State.

1. The facts of paragraphs 1, 2 and/or 3.

DATED: January 7, 1997  
Albany, New York

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