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

Public

July 28, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Hedley Bldg. – 4th Floor
433 River Street
Troy, New York 12180

Roger Joseph Brick, M.D.
117 West Mt. Pleasant Avenue
Livingston, New Jersey 07039

RE: In the Matter of Joseph Brick, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-180) 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 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.

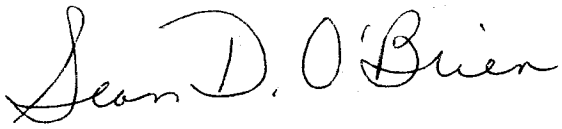
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

COPY

IN THE MATTER OF ROGER JOSEPH BRICK, M.D.

DETERMINATION AND ORDER

BPMC #06-180

A hearing was held on July 19, 2006, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Hearing, dated September 7, 2005, and a Statement of Charges, dated August 29, 2005, were served upon the Respondent, **Roger Joseph Brick, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **C. Deborah Cross, M.D.**, Chairperson, **Andrew J. Merritt, M.D.**, and **Mr. John O. Raymond**, duly designated members of the State Board for Professional Medical Conduct ("Board"), served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

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 Friedman and Mahdavian, **Wilfred T. Friedman, 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.

BACKGROUND

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)(i). Copies of the Commissioner's Order and Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Roger Joseph Brick, M.D. Benjamin Pinczewski, Esq. Mr. Jeffrey E. Britz Rabbi Maurice Kasinetz Rabbi Mordecai Feuerstein

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. Roger Joseph Brick, M.D., the Respondent, was authorized to practice medicine in New York State on October 24, 1980, by the issuance of license number 143817 by the New York State Education Department (Petitioner's Ex. 4).

2. On June 8, 2005, in the Supreme Court of the State of New York, Queens County, the Respondent was found guilty, based on a plea of guilty, of Enterprise Corruption, in violation of New York Penal Law Section 460.20(1)(a), a class B felony (Petitioner's Ex. 6).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

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

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent pled guilty to and was convicted of one count of the crime of Enterprise Corruption. This is a class B felony, the same classification used for Manslaughter in the first degree, Rape in the first degree and Kidnapping in the second degree. Commission of this crime is a grave matter that casts serious doubt upon a physician's moral fitness to practice medicine. A physician who has been convicted of this crime has a difficult task in a professional medical conduct hearing; he must convince a Board hearing committee that his crime does not prove that he is morally unfit to practice medicine and that he can be trusted to continue treating patients and billing for his services. A physician who has been convicted of this crime needs to take responsibility for his crime and must provide a convincing explanation for believing that the crime will not be repeated if he is allowed to keep his medical license. This the Respondent did not do. On direct examination, he gave false testimony about the scope and seriousness of his criminal behavior. Later, during questioning by this Hearing Committee and during redirect testimony, the Respondent gave testimony that was in conflict with the direct testimony description of his criminal behavior. The Respondent's

performance at the hearing does not contradict the contention that his crime should cause revocation of his license; his testimony reinforces that contention.

The crimes committed by the criminal enterprise were the submission of fraudulent medical reports to insurance companies for the purpose of causing the insurance companies to make payments on insurance claims for which there was no genuine medical justification. On direct examination, the Respondent testified that some of these false medical reports bore his signature or what appeared to be his signature, but that he did not know at the time of submission that they contained false information about the medical condition of the patients. He testified that he did not read some of the reports before he signed them and that other people signed some of the reports for him. He testified that these failures were the extent of his criminal conduct. He testified that he withdrew from the criminal enterprise as soon as learned that the police had conducted a raid of the enterprise, in other words, as soon as he learned that there was criminal activity.

This testimony is at odds with the elements of the crime. Enterprise Corruption is defined by Penal Law Section 460.20(1)(a) as follows:

> A person is guilty of enterprise corruption when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with such enterprise, he:
>
> (a) intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity;...

This definition includes within its scope only intentional criminal activity. The negligent acts described in the Respondent's direct testimony do not fit the definition.

On June 8, 2005, a hearing was held in New York State Supreme Court for the purpose of taking the Respondent's guilty plea to Enterprise Corruption. The Respondent was asked during this hearing:

> By pleading guilty are you admitting that you along with other persons known and unknown from on or about October 29, 2002 through October 27, 2003, having knowledge of the existence of a criminal enterprise, and the nature of its activities and being employed by and associated with that criminal enterprise, intentionally conducted and participated in the affairs of the criminal enterprise by participating in a pattern of criminal activity, as follows: ...that you were a member of a No-Fault Insurance Fraud Operation...whose members shared a common purpose to defraud and steal money from insurance companies...[and] promoted this criminal activity by falsifying medical reports of people who were patients...? (Petitioner's Ex. 6, pp. 10-11).

The Respondent answered, "Yes." (Petitioner's Ex. 6, p. 13). The Respondent then stated:

> I worked as the sole physiatrist at the Medical Arts Center clinic at 107-13 Jamaica Avenue, including on and between the dates of October 29, 2002 and October 27, 2003, during which time I participated in the no-fault insurance fraud ring that operated out of this clinic...
>
> Specifically, on July 10, 2003, I wrote false information in the medical report of patient Michael Ortiz, whom I later learned to be [an undercover police officer].
>
> On August 7, 2003, I wrote false information in the medical report of patient Rolando Rodriguez, whom I later learned to be [an undercover police officer].
>
> And on August 21, 2003, I wrote false information in the medical report of [a patient]. I knew that these false reports would be submitted to the insurance companies in support of claims for payment. (Petitioner's Ex. 6, pp. 13-15).

This language bears no resemblance to the Respondent's direct testimony in the present hearing. During questioning by the Hearing Committee, the Respondent was confronted with these differences. He responded that he believed that he had written inaccurate information in one of the medical records. This statement is in direct conflict with his direct testimony that others wrote the false information without his knowledge. On redirect examination, the Respondent testified that he was guilty of Enterprise Corruption because he continued to participate in the criminal enterprise after he learned

of its criminal activity. This is in direct conflict with his direct testimony that he left the enterprise as soon as he learned of its criminal activities.

It is apparent to the Hearing Committee that the Respondent falsely testified on direct examination that his criminal acts were negligent, not intentional, and then, upon realizing that that tactic was not working, switched his story to an admission of some intentional criminal activity.

The Respondent had three character witnesses who testified that they had known the Respondent for many years, were impressed with his character and dedication to his patients, and believed that the Respondent's crime was not indicative of his true character and proclivities. Such testimony can be persuasive if the crime is a single impulsive act. The Respondent, however, was a member of a criminal enterprise that lasted from October 29, 2002, to October 27, 2003. The crime was not a single uncharacteristic aberration; for the Respondent, crime was business as usual.

The Respondent's testimony convinces us that he is no more trustworthy today than he was when the criminal acts were being committed. He has learned nothing from his conviction and criminal punishment. The only penalty sufficient in this situation is revocation of the Respondent's license to practice medicine.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine is revoked.

2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Whitestone, New York
July 25, 2006

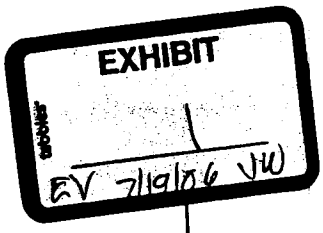
C. Deborah Cross, M.D.

C. Deborah Cross, M.D.
Chairperson

Andrew J. Merritt, M.D.
John O. Raymond

APPENDIX I

ORIGINAL



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

IN THE MATTER OF ROGER JOSEPH BRICK, M.D. CO-04-04-2022-A	COMMISSIONER'S ORDER AND NOTICE OF HEARING

TO: ROGER JOSEPH BRICK, M.D.
117 West Mt. Pleasant Avenue
Livingston, NJ 07039

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached, hereto, and made a part hereof, has determined that **ROGER JOSEPH BRICK, M.D.**, Respondent, licensed to practice medicine in New York state on October 24, 1980, by license number 143817, has been found guilty, based on a plea of guilty, of committing an act constituting a felony under New York State law, in the Supreme Court of the State of New York, Queens County, New York.

It is therefore,

ORDERED, pursuant to New York Public Health Law Section 230(12)(b), that effective immediately, **ROGER JOSEPH BRICK, M.D.**, Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine. This order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law Section 230, and New York State Administrative Procedure Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 17th day of November, 2005 at 10:00 am in the forenoon at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents. 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. Respondent has the right cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU MAY BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW SECTION 230-A. YOU ARE URGED TO OBTAIN AN ATTORNEY FOR THIS MATTER.

DATED: Albany, New York
September 7 ,2005

ANTONIA C. NOVELLO, M.D., M.P.H, Dr. P.H.,
Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER OF ROGER JOSEPH BRICK, M.D. CO-04-04-2022-A	STATEMENT OF CHARGES

ROGER JOSEPH BRICK, M.D., the Respondent, was authorized to practice medicine as a Physician in New York state on October 24, 1980, by the issuance of license number 143817 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 8, 2005, in the Supreme Court of the State of New York, Queens County, New York, Respondent was found guilty, based on a plea of guilty, of Enterprise corruption, in violation of New York Penal Law §460.20(1)(~~a~~ b), a class B felony.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: August 29, 2005
Albany, New York

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