



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

September 4, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180

William L. Wood, Jr., Esq.
Wood & Scher
14 Harwood Court – Suite 512
Scarsdale, New York 10583

Mahendra Gupta, M.D.
6 Theis Lane
Blauvelt, New York 10913

Mahendra Gupta, M.D.
1575 Grand Concourse
Bronx, New York 10452

RE: In the Matter of Mahendra Gupta, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-233) 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.

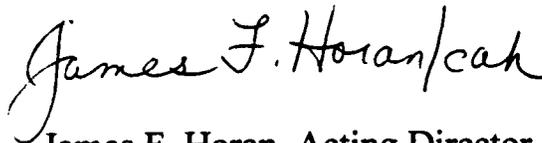
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "James F. Horan/cah". The signature is written in black ink and is positioned above the typed name.

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
MAHENDRA GUPTA, M.D.

DETERMINATION
AND
ORDER
BPMC #03-233

COPY

A "Commissioner's Order and Notice of Referral Proceeding" and a Statement of Charges, both dated July 23, 2003, were served upon the Respondent, **MAHENDRA GUPTA, M.D.** **FRED S. LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **MR. CHARLES AHLERS**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on August 20, 2003, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person and by **WILLIAM L. WOOD, JR., ESQ.**

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 Sections 230(12)(b) and 230(10)(p). Section 230(12)(b) of the statute provides that when a licensee has been convicted of a felony, the Commissioner of Health may issue an order requiring the licensee to refrain from practicing medicine until a hearing can be held to determine what action should be taken with regard to the conviction. Section 230(10)(p) of 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, the Commissioner issued an order requiring Respondent to refrain from practicing medicine until this hearing could be held, based upon his felony conviction. The Notice of Hearing and Statement of Charges allege that Respondent committed professional misconduct pursuant to Education Law Section 6530(9)(a)(i) when he was convicted of a felony under New York Law. A copy of the Commissioner's Order and Notice of Referral Proceeding, and a copy of the Statement of Charges, are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Respondent

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. **MAHENDRA GUPTA**, the Respondent, was authorized to practice medicine in New York State on September 15, 1975, by the issuance of license number 125086 by the New York State Education Department (Ex. 4).

2. On May 30, 2002, Respondent pled guilty to the class C felony of grand larceny in the second degree in the New York State Supreme Court, County of Bronx, Criminal Division. As a result of this conviction, Respondent was sentenced to 5 years probation, restitution of \$180,000.00, and imposition of a 10 percent surcharge (Ex.'s 6-8).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent's conviction of grand larceny, second degree, constituted professional misconduct pursuant to New York Education Law §6530(9)(a)(i), and that the appropriate penalty for this misconduct is revocation of Respondent's license to practice medicine.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(a)(i) by having been convicted of a crime under the laws of New York State.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates, as noted above, that Respondent pled guilty of grand larceny in the second degree, a class C felony. The conviction followed the uncovering of a scheme whereby Respondent billed the Medicaid program, over a period of three years, for comprehensive examinations of patients, when he either did not perform comprehensive examinations, or performed no examinations, with the aim of obtaining reimbursement in excess of that to which he was entitled (Ex. 7).

Inasmuch as Respondent has been convicted of a crime under New York State Law, the only issue to be addressed in this decision, pursuant to Public Health Law section 230(10)(p), is the penalty to be imposed for Respondent's misconduct.

The essence of Respondent's argument with regard to the penalty to be imposed in this case is that he pled guilty to the crime because his poor health prevented him from defending against the charges or even continuing his practice (he ceased practicing in July, 2002), and that his health is now improving enough so he may be able to resume practice. This argument was offered in "mitigation" of a possible penalty of revocation of Respondent's license, but it is utterly irrelevant to the question of penalty. Respondent's health problems did not cause his criminal acts, his greed did. Furthermore, Respondent's improving health is as irrelevant to the charges as his previously deteriorating health. This

case is not about Respondent's health, but about his criminal conduct. Nothing in the evidence presented on the Respondent's behalf would tend to indicate that mitigation of the sanction of revocation is inappropriate, such as evidence of remorse or rehabilitation.

The Hearing Committee unanimously concludes that, absent evidence in mitigation, the appropriate penalty for a physician such as Respondent who has so little regard for the law and the sanctity of the medical profession that he steals well in excess of \$50,000 from the Medicaid program (the restitution ordered by the court was \$180,000), thereby generating a felony conviction, is license revocation.

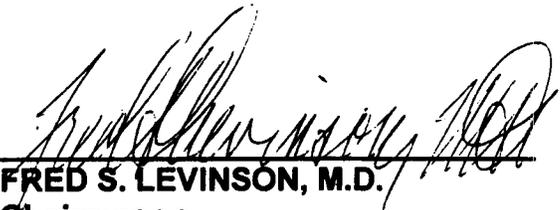
ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **MAHENDRA GUPTA, M.D.** is hereby **REVOKED**.

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

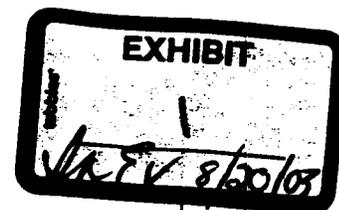
DATED: Middletown, New York
Sept. 4, 2003


FRED S. LEVINSON, M.D.
Chairperson

ERNST A. KOPP, M.D.
MR. CHARLES AHLERS

APPENDIX 1

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



IN THE MATTER
OF
MAHENDRA GUPTA, M.D.
NY-01-08-4085-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: MAHENDRA GUPTA, M.D.
6 Theis Lane
Blauvelt, NY 10913

MAHENDRA GUPTA, M.D.
1575 Grand Concourse
Bronx, NY 10452

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 **MAHENDRA GUPTA, M.D.**, Respondent, licensed to practice medicine in New York state on September 15, 1975, by license number 125086, has been found guilty, based on a plea of guilty, of committing an act constituting a felony under New York state law.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **MAHENDRA GUPTA, 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 N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. 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 20th day of August, 2003 at 10:00 am in the forenoon at Hedley Park Place, 5th Floor, 433 River Street, Troy, New York. 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

July 23

,2003



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
MANENDRA GUPTA, M.D.
NY-01-08-4085-A

STATEMENT
OF
CHARGES

MANENDRA GUPTA, M.D., the Respondent, was authorized to practice medicine in New York state on September 15, 1975, by the issuance of license number 125086 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 30, 2003, in the Supreme Court of the State of New York, Trial Term, Part 40, County of Bronx, New York, Respondent was found guilty, based on a plea of guilty, of Grand Larceny in the second degree, in violation of New York Penal Law §155.40, a class C felony, and on or about November 20, 2002, was sentenced to five (5) years probation and to pay \$180,000.00 restitution.

SPECIFICATION

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

1. The facts in paragraph A.

DATED: *July 23*, 2003
Albany, New York


BRIAN M. MURPHY
Chief Counsel