



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**

October 1, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Crisologo Padilla, M.D.

REDACTED

Crisologo Padilla, M.D.

REDACTED

Robert Bogan

Associate Counsel

NYS Department of Health

Office of Professional Medical Conduct

433 River Street – 1<sup>st</sup> Floor Annex

Troy, New York 12180

Michael S. Kelton, Esq.

Lippman, Krasnow & Kelton

711 Third Avenue, Suite 1806

New York, New York 10017

**RE: In the Matter of Crisologo Padilla, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-309) 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,

REDACTED

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:djh  
Enclosure

IN THE MATTER  
OF  
**CRISOLOGO PADILLA, M.D.**

DETERMINATION  
AND  
ORDER

BPMC NO. 02-309

A hearing was held on September 18, 2002, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated June 10, 2002, were served upon the Respondent, **Crisologo Padilla, M.D.** Ernst A. Kopp, M.D., Chairperson, **John W. Choate, M.D.**, and **Stephen E. Wear, 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. **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 **Michael S. Kelton, Esq.**, Lippman Krasnow & Kelton, 711 Third Avenue, Suite 1806, New York, New York 10017.

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). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

### WITNESSES

For the Petitioner:

None

For the Respondent:

Louise Kane  
Bernard Levowitz, M.D.  
Crisologo Padilla, 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. Crisologo Padilla, M.D., the Respondent, was authorized to practice medicine in New York State on August 17, 1971, by the issuance of license number 109998 by the New York State Education Department (Petitioner's Ex. 4).

2. On October 23, 2001, in the United States District Court, Southern District of New York, the Respondent was found guilty, based on a plea of guilty, of one count of Accepting Kickbacks for Medicare Referrals, in violation of 42 USC 1320a-7b(b)(1)(B), and one count of Tax Evasion, in violation of 26 USC 7201. He was sentenced to a \$30,000.00 fine, a \$100.00 assessment and three years probation. (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 acts constituting crimes under federal law..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

The Respondent was convicted of soliciting and accepting kickbacks from durable medical equipment providers and laboratories. The Respondent received office equipment and cash in exchange for referring Medicare patients to these durable medical equipment providers and laboratories. The Respondent was also convicted of Tax Evasion for not reporting the kickbacks on his income tax returns for 1994, 1995 and 1996.

The Respondent argued that he should not receive a harsh penalty from this Hearing Committee for a number of reasons. He testified that, once he was arrested, he cooperated with the authorities in their efforts to arrest and convict businessmen who were giving kickbacks to physicians. An October 15, 2001, letter from Michael L. Tabak, Esq., of the United States Attorney's office describes the considerable extent of this

cooperation (Respondent's Ex. C). The Respondent introduced evidence to prove the high quality of his medical services and his character (the testimony of Louise Kane and Bernard Levowitz, M.D., Respondent's Ex. A, B, G, H and I). The Respondent also noted that he never referred a patient for durable medical equipment or laboratory tests who did not need the service, that he is the sole support of his disabled son, and that there is no chance that he will commit such crimes again if he is allowed to keep his license to practice medicine.

The Hearing Committee is unpersuaded by the Respondent's evidence and arguments. It is true that the Respondent provided considerable assistance to the United States Attorney, but he did not do so for altruistic reasons. He knew that his conviction was a certainty and that cooperating with the prosecutors would result in a more lenient sentence than he otherwise would receive. The Hearing Committee does not believe that there is any reason for it to reward the Respondent for recognizing what is in his self-interest and acting accordingly.

The other considerations raised by the Respondent in support of a lenient penalty are far outweighed by the nature and extent of the Respondent's criminal activity. His crime was not an isolated incident. It was not an aberration from the Respondent's normal behavior. By the Respondent's own testimony, he began accepting kickbacks in 1987 or 1988 and did not stop until his arrest in 1998. He testified that for a four-year period he had to pay the Internal Revenue Service approximately \$70,000.00 because of unreported kickbacks. According to the Felony Information against the Respondent, the amount of kickbacks received in 1994, 1995 and 1996 was \$99,949.00. It is safe to conclude that the total in kickbacks received over the ten or more years that the Respondent participated in this activity is well into the six figure range. Rather than an aberration or an isolated incident, soliciting and receiving kickbacks was the

Respondent's routine method for doing business; it was a standard practice for him. Receiving kickbacks was a decade long criminal activity that ended only because of the Respondent's arrest. The only adequate penalty for such behavior is a revocation of the Respondent's license to practice medicine.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in New York State is revoked.
2. 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: Loudonville, New York**  
*Sept 30<sup>th</sup>*, 2002

REDACTED

**Ernst A. Kopp, M.D.**  
**Chairperson**

**John W. Choate, M.D.**  
**Stephen E. Wear, Ph.D.**

# **APPENDIX I**

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

EXHIBIT  
1  
Via EV 9/18/02

IN THE MATTER  
OF  
CRISOLOGO PADILLA, M.D.  
CO-01-10-5362-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: CRISOLOGO PADILLA, M.D.  
REDACTED

CRISOLOGO PADILLA, M.D.  
REDACTED

**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 18<sup>th</sup> day of July 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> 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, 5<sup>th</sup> 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 July 8, 2002.

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 July 8, 2002, 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

*June 10*, 2002

REDACTED

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**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) 402-0828

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**IN THE MATTER**  
**OF**  
**CRISOLOGO PADILLA, M.D.**  
**CO-01-10-5362-A**

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**STATEMENT**  
**OF**  
**CHARGES**

**CRISOLOGO PADILLA, M.D.**, the Respondent, was authorized to practice medicine in New York state on August 17, 1971, by the issuance of license number 109998 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about October 23, 2001, in the United States District Court, Southern District of New York, Respondent was found guilty, based on a plea of guilty, to one (1) count of Accepting Kickbacks for Medicare Referrals, in violation of 42 USC 1320 a-7b(b)(1)(B), and one (1) count of Tax Evasion, in violation of 26 USC 7201, and was sentenced to a \$30,000.00 fine, a \$100.00 assessment, and three (3) years probation.

**SPECIFICATION**

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

1. The facts in Paragraph A.

DATED: *June 10*, 2002  
Albany, New York

REDACTED

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