



# 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*

Paula Wilson  
*Executive Deputy Commissioner*

December 27, 1994

RECEIVED

JAN 3 1995

OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Morales Bloch, Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza, 6th Floor  
New York, New York 10001

Melville Ferns, R.P.A.  
106 Cottonwood Street  
Jersey City, New Jersey 06305

RE: In the Matter of Melville Ferns, R.P.A.

Effective Date: 1/3/95

Dear Ms. Bloch and Dr. Ferns:

Enclosed please find the Determination and Order (No. 94-274) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:rlw

Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
OF : AND  
MELVILLE FERNS, R.P.A. : ORDER

-----X : BPMC-94-274

A Notice of Hearing, dated October 14, 1994, and Statement of Charges, dated August 25, 1994, were served upon the Respondent Melville Ferns, R.P.A.. Eugenia Herbst (Chair), Diana Garneau, M.D., and Robert Strauss, M.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. JEFFREY ARMON, ESQ., Administrative Law Judge, served as the Administrative Officer. A hearing was held on November 22, 1994. The Department of Health appeared by Claudia Morales Bloch, Esq., Associate Counsel. The Respondent appeared pro se. 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 CHARGES**

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). 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 parenthesis 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. Melville Ferns, R.P.A. (hereinafter "Respondent") was authorized to practice as a Physician's Assistant in New York State on October 4, 1988 by the issuance of license number 003637 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice as a Physician's Assistant through December 31, 1995.

2. On or about October 20, 1993, in the United States District Court, Southern District of New York, Respondent was sentenced pursuant to his conviction based upon his plea of guilt to one count of Mail Fraud, in violation of 18 USC 1341 and one count of Conspiracy to commit Medicaid and Mail Fraud, in violation of 18 USC 371. Respondent was sentenced to three months incarceration followed by a term of supervised release of three years, three months of which was to be a period of home detention with electronic monitoring. In addition, he was ordered to perform

six hundred hours of community service and to pay restitution to the State of New York in the amount of \$100,000:00 (Ex.4).

3. The underlying basis for such conviction was that Respondent, together with others, participated in a scheme to operate medical clinics for the purpose of obtaining payments directly and indirectly from the Medicaid system by submitting bills, and causing others to submit bills, to the New York State Department of Social Service for medical services, drug prescriptions, and laboratory tests which he knew to be, and were in fact, medically unnecessary. (Ex.3,4)

4. Respondent cooperated fully with authorities investigating the scheme to defraud the Medicaid System and provided valuable assistance to such authorities, including testifying before a grand jury investigating the conspiracy to defraud the Medicaid program. (Ex. A)

### CONCLUSIONS OF LAW

The following conclusions 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 Committee determined that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Respondent was convicted of two counts of violations of Federal law based upon his plea of guilty. The Hearing Committee voted to sustain the Specification of professional misconduct contained within the Statement of Charges pursuant to New York Education Law Section 6530(9)(a)(ii) which sets forth the conviction of committing an act constituting a crime under Federal law as constituting professional misconduct.

### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined to suspend Respondent's license to practice as a Physician's Assistant for a two year period, said suspension stayed, and further determined to place him on probation for said two year period. The Committee also felt it appropriate to restrict Respondent during the period of probation to practicing in a non-private practice setting. It was thought that Respondent's criminal activity arose while he was employed in a private medical practice and that the protection of the public would best be served if he was to be prohibited from returning to such a practice during his probationary period. To further protect the public, the Committee determined to require Respondent to notify the Office of Professional Conduct of any change in his employment and to obtain the approval of the OPMC before actually making such a change in employment.

In determining this penalty, which 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, the Committee took into account Respondent's significant cooperation with the authorities investigating the fraudulent Medicaid practice in which he participated. It also considered Respondent's need to maintain employment to fulfill his order of restitution and the fact that he testified that his current employment is directed toward providing medical care to the underserved substance abuser and AIDS infected populations. It was also considered that, as a Physician's Assistant, Respondent's activities would be supervised by a physician. It was concluded that this penalty would most appropriately protect the public while also enabling the Respondent to repay his debt to the community and continue his efforts toward rehabilitation.

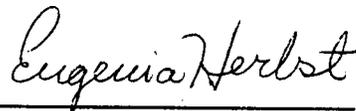
**ORDER**

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

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex.1) is **SUSTAINED**.
  
2. Respondent's license to practice as a Physician's Assistant in New York State is **SUSPENDED** for a period of two years from the effective date of this Order, said suspension to be **STAYED**.
  
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.

**DATED: Albany, New York**

December 22 1994



**EUGENIA HERBST (Chair)**

**DIANA GARNEAU, M.D.  
ROBERT STRAUSS, M.D.**

**TO: Claudia Morales Bloch  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza-6th Floor  
New York, New York 10001**

**Melville Ferns, R.P.A.  
106 Cottonwood Street  
Jersey City, New Jersey 07305**

**APPENDIX I**

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

-----X  
: IN THE MATTER : NOTICE OF  
: OF : REFERRAL  
: MELVILLE FERNS, P.A. : PROCEEDING  
: :  
-----X

TO: MELVILLE FERNS, P.A.  
106 Cottonwood Street  
Jersey City, NJ 07305

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 22nd day of November, 1994 at 10:00 o'clock in the forenoon 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.

PLAINTIFF'S  
DEFENDANT'S  
COMPANY'S  
~~DEPARTMENT'S~~  
PETITIONER'S *for identification*  
RESPONDENT'S *in evidence*  
DATE 11/22/94 REPORTER N/M  
STERLING REPORTING SERVICE, INC.

EXHIBIT 1

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 November 8, 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 November 8, 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

*October 14,* 1994



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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

CLAUDIA MORALES BLOCH  
Associate Counsel  
212-613-2615

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
MELVILLE FERNS, P.A. : CHARGES  
-----X

MELVILLE FERNS, P.A., the Respondent, was authorized to practice as a Physician's Assistant in New York State on October 4, 1988 by the issuance of license number 003637 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice as a physician's assistant for the period January 1, 1993 through December 31, 1995 at 372 West 46th Street, Apt. 3, New York, NY 10036.

SPECIFICATION

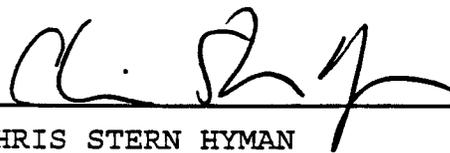
Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(ii) (McKinney Supp. 1994), in that Respondent was convicted of committing an act constituting a crime under federal law, specifically:

On or about December 17, 1991, Respondent was convicted, upon his plea of guilty, of one (1) count of fraud, specifically one (1) count of

Conspiracy to Commit Mail Fraud, in violation of 18 USC 371, and one (1) count of Mail Fraud, in violation of 18 USC 1341, in that, in or about September, 1990 through in or about May, 1991, Respondent together with others, participated in a scheme to operate medical clinics for the purpose of obtaining payments directly and indirectly from the Medicaid system by submitting bills, and causing others to submit bills, to the New York State Department of Social Service for medical services, drug prescriptions, and laboratory tests which he knew to be, and were in fact, medically unnecessary. Judgement was entered, after sentencing, on or about November 1, 1993.

DATED: New York, New York

*August 25, 1994*



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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional Medical  
Conduct

**APPENDIX II**  
**TERMS OF PROBATION**

1. That Respondent, during the period of probation, shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession;
  
2. That Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Health Department, Empire State Plaza, Corning Tower Building, 4th Floor, Albany, New York 12237 of any employment and practice, of Respondent's residence and telephone number, of any change in Respondent's employment practice, residence, or telephone number within or without the State of New York. Respondent shall obtain the prior approval of the Director before making any change in employment, the setting of which shall be restricted as set forth in Paragraph Seven below.
  
3. Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that Respondent had paid all registration fees due and owing to the NYSED and Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by Respondent to the New York State Department of Health, addressed to the Director, Office Of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation;
  
4. Respondent shall submit written proof to the NYSDOH, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1): Respondent is currently registered

with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register, and that 2): Respondent has paid any fines which may have previously been imposed upon the Respondent by the Board or by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

5. Respondent shall comply with all the terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board;
6. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any other violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law;
7. Respondent's practice as a Physician's Assistant shall be restricted to not include any employment in a private medical practice setting during the period of probation.