



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D., M.P.H.
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NYS Department of Health
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Office of Professional Medical Conduct

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Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

June 14, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mitchell Mernick, M.D.
c/o Paul Mernick, Esq.
337 R. Central Avenue
Lawrence, New York 11559

Mitchell Mernick, M.D.
Reg. # 41667-054
P.O. Box 1000
Otisville, New York 10963

RE: License No. 157744

Dear Dr Mernick:

Enclosed please find Order #BPMC 00-177 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect June 14, 2000.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Edward J. Yun, Esq.
Nathan L. Dembin & Assoc., P.C.
225 Broadway, Suite 1400
New York, New York 10007

Roy P. Nemerson, Esq

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

IN THE MATTER
OF
MITCHELL MERNICK, M.D.

SURRENDER
ORDER

BPMC # 00-177

Upon the proposed agreement of MITCHELL MERNICK, M.D. (Respondent) to Surrender his license as a physician in the State of New York, which proposed agreement is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted; it is further

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Surrender Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 6/10/00


WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
MITCHELL MERNICK, M.D.

SURRENDER
OF
LICENSE

STATE OF NEW YORK)
COUNTY OF) ss.:

MITCHELL MERNICK, M.D., being duly sworn, deposes and says:

On or about March 26, 1984, I was licensed to practice medicine as a physician in the State of New York having been issued License No. 157744 by the New York State Education Department.

mailing address:

I am currently incarcerated at Mitchel Mernick MO, c/o Paul Mernick, 337R Central Ave, Lawrence, NY 11559, and

I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that I have been charged with one specification of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit "A".

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York on the grounds that I admit guilt to that specification in full satisfaction of the Statement of Charges.

I hereby make this application to the State Board for Professional Medical

Conduct and request that it be granted.

I understand that, in the event that the application is not granted by the State Board for Professional Medical Conduct, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such application shall not be used against me in any way, and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct pursuant to the provisions of the Public Health Law.

I agree that, in the event the State Board for Professional Medical Conduct grants my application, an order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Surrender Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Surrender Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

DATED 5/4/00



MITCHELL MERNICK, M.D.
RESPONDENT

Sworn to before me
on this 4th day of
May 2000



NOTARY

DANIELLE M. ~~SPERRY~~ SPERRY
Notary Public, State of New York
No. 4966087
Qualified in Orange County
Commission Expires April 30, 192002

The undersigned agree to the attached application of the Respondent to surrender his license.

Date: _____

~~ALAN LAMBERT, Esq.
Attorney for Respondent~~

*See accompanying
letter from
Deuber + Associates
RN*

Date: 6/1/2000



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Date: 6/7/00



ANNE F. SAILE
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
MITCHELL MERNICK, M.D.

STATEMENT
OF
CHARGES

MITCHELL MERNICK, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 26, 1984, by the issuance of license number 157744 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 12, 1999, Respondent was sentenced in the United States District Court for the Southern District of New York, to three years and one month incarceration and three years of probation, and was ordered to make restitution/payments in the amount of \$542,255.00. Respondent was convicted upon pleading guilty to conspiracy to commit insurance fraud and conspiracy to distribute controlled substances, as is more fully set forth in prosecutor's Information 98CR.970 (USDC SDNY - Matter of the United States of America v. Mitchell Mernick, M.D.) which is attached, marked as Appendix "A," and incorporated herein.

SPECIFICATION OF CHARGES

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraph A.

DATED: February , 2000
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - :

INFORMATION

MITCHELL MERNICK, M.D., :

98 Cr. 970

Defendant. :

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COUNT ONE

The United States Attorney charges:

THE INSURANCE FRAUD CONSPIRACY

Background

1. At all times relevant to this Information, health insurance plans paid for certain health care services actually rendered to insured patients by qualified health care providers (hereinafter "providers"), including nutritionists meeting certain criteria established by insurance companies. The criteria established by different insurance companies varied, ranging from a minimal requirement that a nutritionist possess a degree in nutrition and be registered with a nationally recognized association for nutritionists to a requirement that a nutritionist be licensed by and registered with the state in which he or she practiced. Nutritional services rendered by individuals not meeting these criteria were not paid for by health insurance plans.

2. At all times relevant to this Information, the

American Medical Association published an annual physician's Current Procedural Terminology manual that set forth various procedure codes ("CPT codes") to be used to identify the particular service provided to a patient and the type of provider who provided that service, for example, a doctor or a nutritionist. In addition, at all times relevant to this information, insurance companies assigned individual providers unique provider numbers.

3. At all times relevant to this information, when seeking reimbursement from an insurer for services rendered to a patient, providers were required to specify the provider number of the provider who actually rendered the services, the service performed, the date on which and the location at which the services were performed, and the relevant CPT code on a claim form (called a "Form 1500") or an electronic submission. The Form 1500 required the provider's signature certifying that the information contained in the claim was accurate and that the services reflected on the form had been provided. Similarly, before some insurers would accept electronically submitted claims, they required the provider to certify the accuracy of the electronic submissions.

4. At all times relevant to this information, insurers, when paying claims, issued checks and Explanation of Benefits forms ("EOB") which detailed the amount of the reimbursement paid by the insurer, the services for which reimbursement was paid and the dates the services were provided. Typically the check and EOB were sent by mail to the individual or entity who had submitted the

claim form. If the claim was submitted by the provider, a copy of the EOB was generally sent to the beneficiary.

The Defendant

5. At all times relevant to this Information, MITCHELL MERNICK, M.D., the defendant, was a physician licensed to practice in New York State who owned practices known as Park Avenue Medical and Nutrition, P.C. ("Park Avenue Medical"), and Middletown Comprehensive d/b/a Pelham Bay Medical ("Pelham Bay Medical"). Park Avenue Medical was located 15 Park Avenue, First Floor, New York, New York until in or about December 1997, when it moved to 10 East 38th Street, Fourth Floor, New York, New York. At all times relevant to this Information, Pelham Bay Medical was located at 2809 Middletown Road, Bronx, New York.

STATUTORY ALLEGATIONS

6. From at least in or about 1996, up to and including in or about March 1998, in the Southern District of New York, MITCHELL MERNICK, M.D., the defendant, together with Stephen Phillips, a co-conspirator not named as a defendant herein, and others known and unknown to the Grand Jury, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree, together and with each other, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 1035, 1341, and 1347.

7. It was a part and object of the conspiracy that

MITCHELL MERNICK, M.D., the defendant, together with his co-conspirators, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, namely a scheme to defraud insurance companies, including but not limited to Oxford Health Plans, Empire Blue Cross and Blue Shield, Aetna/U.S. HealthCare, NYLCARE Health Plan, and Group Health Insurance, through the submission of false claims, for the purpose of executing such scheme and artifice, and attempting to do so, would and did place and cause to be placed in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, to wit, documents and checks relating to claims for reimbursement, and would and did knowingly cause such matters and things to be delivered by mail according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

8. It was a further part and object of said conspiracy that MITCHELL MERNICK, M.D., the defendant, together with his co-conspirators, unlawfully, willfully and knowingly, in connection with the delivery of and payment for health care benefits, items and services, did execute, and attempt to execute, a scheme and artifice to defraud health care benefit programs, and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and

control of, health care benefit programs, to wit, the defendant and his co-conspirators submitted and caused to be submitted claims to health insurers, including but not limited to Oxford Health Plans, Empire Blue Cross and Blue Shield, Aetna/U.S. HealthCare, NYLCARE Health Plan, and Group Health Insurance, which sought reimbursement for physician services that were not rendered, in violation of Title 18, United States Code, Section 1347.

9. It was a further part and object of said conspiracy that MITCHELL MERNICK, M.D., the defendant, together with his co-conspirators, unlawfully, willfully, and knowingly, would and did make and cause to be made materially false, fictitious and fraudulent statements and representations, and used false writings and documents knowing the same to contain materially false, fictitious and fraudulent statements and entries in connection with the delivery of and payment for health care benefits, items and services, to wit, MERNICK and his co-conspirators submitted and caused to be submitted claims to health insurers, including but not limited to Oxford Health Plans, Empire Blue Cross and Blue Shield, Aetna/U.S. HealthCare, NYLCARE Health Plan, and Group Health Insurance, which falsely represented that physician services had been rendered by MERNICK when in fact unlicensed and unregistered nutritionists employed by MERNICK had provided non-covered services to weight-loss patients, in violation of Title 18, United States Code, Section 1035(a)(2).

The Means and Methods of the Conspiracy

10. Among the means and methods used by MITCHELL MERNICK, M.D., the defendant, and his co-conspirators, to achieve the objects of the conspiracy were the following:

a. Throughout the period relevant to this Information, Stephen Phillips, a co-conspirator not named herein as a defendant, was an unlicensed and unregistered nutritionist employed by MITCHELL MERNICK, M.D., the defendant. Phillips, posing as a nutritionist, treated patients who were seeking weight-loss counseling at Park Avenue Medical and Pelham Bay Medical. Other unlicensed and unregistered nutritionists employed by MERNICK also performed these weight-loss services. The weight-loss patients generally scheduled appointments with, and were seen only by, the nutritionists, and not by MERNICK. Together with Phillips, and others known and unknown to the Grand Jury, MERNICK submitted and caused to be submitted to insurance companies claims for reimbursement for the weight-loss services performed by the nutritionists. These claims falsely represented that MERNICK had provided the services for which reimbursement was sought.

b. From in or about 1996 through in or about March 1998, MITCHELL MERNICK, M.D., the defendant, and his co-conspirators, submitted and caused to be submitted thousands of claims to health insurers which falsely represented that medical services had been rendered by MERNICK in order to obtain payment

for non-covered weight-loss services' that had been rendered by unlicensed and unregistered nutritionists employed by MERNICK. As a result of the false claims submitted for weight-loss services provided at both Park Avenue and Pelham Bay Medical, insurers paid hundreds and hundreds of thousands of dollars. For example, during the period January 1997 through March 19, 1998, insurers paid at least \$450,000.

Overt Acts

11. In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

a. On or about October 18, 1997, MITCHELL MERNICK, M.D., the defendant, submitted a signed false claim for reimbursement to Empire Blue Cross and Blue Shield ("Empire").

b. On or about December 2, 1997, MITCHELL MERNICK, M.D., the defendant, submitted a signed false claim for reimbursement to Empire.

c. On or about January 9, 1998, MITCHELL MERNICK, M.D., the defendant, submitted a signed false claim for reimbursement to Empire.

d. On or about February 4, 1998, MITCHELL MERNICK, M.D., the defendant, submitted a signed false claim for reimbursement to Empire.

(Title 18, United States Code, Section 371.)

6008

COUNT TWO

The United States Attorney further charges:

CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCES

Background

12. The allegations contained in paragraphs 5 and 10 of this Information are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

13. The nutritionists who worked for MITCHELL MERNICK, M.D., the defendant, at Park Avenue Medical and Pelham Bay Medical, including Stephen Phillips and Diane Kim England, co-conspirators not named as defendants herein, examined and treated, on an individual basis, patients who sought to lose weight. Phillips and England counseled these patients concerning weight-loss treatment options, including behavior modification, appetite suppression medication, or a combination of the two. Phillips and England routinely dispensed appetite suppression medication to their weight loss patients. The appetite suppression medication that Phillips and England dispensed to their patients included but was not limited to phentermine and fenfluramine, both of which were Schedule IV controlled substances, as set forth in 21 U.S.C. § 812 and 21 C.F.R. §§ 1308.14(d) and (e)(8).

14. At all times relevant to this Information, Stephen Phillips and Diane Kim England, co-conspirators not named as defendants herein, who were not licensed as physicians, were not lawfully permitted to dispense controlled substances, including

phentermine and fenfluramine. Nevertheless, on a regular basis, from in or about 1996 through on or about March 18, 1998, Phillips dispensed phentermine and fenfluramine to weight-loss patients at Park Avenue Medical and Pelham Bay Medical. England likewise dispensed phentermine and fenfluramine to weight-loss patients from in or about January 1997 through on or about March 18, 1998.

15. At all times relevant to this information, MITCHELL MERNICK, M.D., the defendant, was cognizant of and facilitated the unlawful dispensing of phentermine and fenfluramine by Stephen Phillips and Diane Kim England, co-conspirators not named as defendants herein, by permitting Phillips, England and others to utilize his Drug Enforcement Administration number to order the phentermine and fenfluramine, by ordering those controlled substances himself, and by maintaining the phentermine and fenfluramine at both Park Avenue Medical and Pelham Bay Medical to have available for Phillips and England, among others, to dispense to weight-loss patients.

STATUTORY ALLEGATIONS

16. From in or about 1996 through on or about March 18, 1998, in the Southern District of New York, MITCHELL MERNICK, M.D., the defendant, together with Stephen Phillips and Diane Kim England, co-conspirators not named as defendants herein, and others known and unknown, unlawfully, intentionally and knowingly would and did combine, conspire, confederate, and agree together and with each other to violate the federal narcotics laws.

17. It was a part and object of said conspiracy that

MITCHELL MERNICK, M.D., the defendant, together with his co-conspirators, would and did distribute and possess with intent to distribute, mixtures and substances containing detectable amounts of controlled substances, to wit, phentermine and fenfluramine, in violation of Sections 812, 841(a)(1), and 841(b)(2) of Title 21, United States Code and Sections 1308.14 (d) and (e)(8) of Title 21, Code of Federal Regulations.

Overt Acts

18. In furtherance of said conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York:

a. On various dates from in or about 1996 through on or about March 18, 1998, Stephen Phillips, a co-conspirator not named as a defendant herein, dispensed appetite suppression medication, including phentermine and fenfluramine, to weight loss patients at Park Avenue Medical and Pelham Bay Medical.

b. On various dates from in or about January 1997 through on or about March 18, 1998, Diane Kim England, a co-conspirator not named as a defendant herein, dispensed appetite suppression medication, including phentermine and fenfluramine, to weight loss patients at Park Avenue Medical and Pelham Bay Medical.

(Title 21, United States Code, Section 846.)

Mary Jo White
MARY JO WHITE
United States Attorney

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A
REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more)
OF A MEDICAL LICENSE**

1. Respondent shall immediately cease and desist from engaging in the practice of medicine in accordance with the terms of the Order. In addition, Respondent shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Respondent shall have delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299 his original license to practice medicine in New York State and current biennial registration within thirty (30) days of the effective date of the Order.
3. Respondent shall within fifteen (15) days of the Order notify his patients of the cessation of his medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate.
4. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority whichever time period is longer. Records shall be maintained in a safe and secure place which is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient or and/or his or her representative requests a copy of the patient's medical record or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of their inability to pay.
5. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall within fifteen (15) days advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance privileges to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 to the DEA.
6. Respondent shall within fifteen (15) days return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall cause all prescription pads bearing his name to be destroyed. If no other licensee is providing services at his practice location, all medications shall be properly disposed.
7. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings by which his eligibility to practice is represented.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered by himself or others while barred from engaging in the practice of medicine. Respondent may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and if his license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order, Respondent shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.

10. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in section 230-a of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which the Respondent is found guilty and may include revocation of a suspended license.