



# 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*

June 19, 2001

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Amy B. Merklen, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2509  
Albany, New York 12237

Barry J. Saul, M.D.  
525 Western Highway  
Blauvelt, New York 10913

Barry J. Saul, M.D.  
155 Country Road  
Cresskill, New Jersey 07626

Barry J. Saul, M.D.  
65 East 76<sup>th</sup> Street – Apt. 1B  
New York, New York 10021

### **RE: In the Matter of Barry J. Saul, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-147) 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.

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.

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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

**DECISION**

**AND**

**ORDER**

**OF THE**

**HEARING COMMITTEE**

**IN THE MATTER**

**OF**

**BARRY J. SAUL, M.D.**

**ORDER NO.**

**BPMC 01- 147**

**COPY**

The undersigned Hearing Committee consisting of **RONALD A. GABEL, M.D. CHAIRPERSON, LYON H. GREENBERG, M.D.**, and **JAMES P. MILSTEIN** was duly designated and appointed by the State Board for Professional Medical Conduct. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as Administrative Officer.

The hearing was conducted pursuant to the provisions of Section 230(10) of the New York State Public Health Law and Sections 301-307 and 401 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of provisions of Section 6530 of the New York Education Law by **BARRY J. SAUL, M.D.** (hereinafter referred to as "Respondent"). **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as Administrative Officer.

The New York State Board For Professional Medical Conduct (hereinafter referred to as the State or Petitioner) appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, New York State Department of Health (hereinafter referred to as DOH). **AMY B. MERKLEN, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct of counsel. Respondent made no appearance whatsoever.

Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made. Exhibits were received in evidence and made a part of the record.

The Committee has considered the entire record in the above captioned matter and hereby renders its decision.

### **RECORD OF PROCEEDING**

Notice of Hearing and Statement of Charges Signed / Served	Dated: February 13, 2001	Served: February 22, 2001
Notice of Hearing returnable:	March 13, 2001	
Location of Hearing:	Troy, NY	
Respondent's answer dated / served:		N/A
The State Board for Professional Medical Conduct (hereinafter referred to as "Petitioner" or "The State") appeared by:	<b>DONALD P. BERENS, JR.</b> General Counsel by <b>AMY B. MERKLEN, ESQ.</b> Assistant Counsel Bureau of Professional Medical Conduct Albany, New York 12237	
Respondent did not appear in person and was not represented by counsel.		
Respondent's Last Known Address	525 Western Highway, Blauvelt, NY 10913	
Respondent's License Number and Registration Expiration Date	120070	March 13, 1999
Pre-Hearing Conference Held:	March 13, 2001	
Hearings held on:	March 13, 2001	
Conferences held on:	none	
Closing briefs received:	(State Only) April 3, 2001	
Record closed:	April 27, 2001	
Date of Deliberation:	April 27, 2001	

### **SUMMARY OF PROCEEDINGS**

The Statement of Charges in this proceeding alleges three grounds of misconduct:

1. Failing to provide a patient with requested documentation for the purposes of insurance reimbursement in violation of N.Y. Education Law §6530(42).
2. Failing to respond to requests from the Department of Health to provide a patient records in a timely manner in violation of New York Education Law §6530 (28).
3. Willfully failing to register in violation of New York Education Law §6530 (12).

The allegations are more particularly set forth in the Statement of Charges which is attached hereto as Appendix One.

Petitioner called 2 witnesses.

Investigator Bonnie Malsan, RN  
Investigator Kenneth Spooner

Respondent defaulted and called no witnesses.

### **SIGNIFICANT LEGAL RULINGS:**

#### **The State Establishes Jurisdiction over Respondent**

Pursuant to Part 230 (10) (d) of the Public Health Law, the state must obtain personal service upon Respondent in order to establish jurisdiction over him. However, where, after due diligence to obtain personal service has been exercised and proven by the state, jurisdiction can be established by sending the Notice of Hearing and Statement of Charges to Respondent by registered or certified mail return receipt requested. The due diligence must be certified under oath. The address to which the documents must be mailed, is the "last known address by the board (sic)" (Public Health Law Part 230(10)(d))

In this case, Petitioner obtained jurisdiction through service by mail (see Exhibit 2 in evidence). Exhibit 2 establishes by various affidavits that Petitioner made a number of genuine efforts to serve Respondent personally. The Notice of Hearing and Statement of Charges were sent by mail because each of the various attempts at personal service were unsuccessful. Affidavits of service by certified mail to each of several addresses where Respondent was available are also part of Exhibit 2. Therefore, the Administrative Law Judge found that Petitioner had established jurisdiction over Respondent.

The Board communicated with Respondent by mail and telephone on several occasions. Some documents were sent by *Certified Mail, Return Receipt Requested*. The State produced receipts which purported to have Respondent's signature on them (Exhibits 4 and 7). In addition, the record will show that Respondent spoke to Board representatives on the telephone. It therefore follows that Respondent had *actual*

*notice* that the Board was about to commence proceedings against him. The evidence does not show Respondent had actual knowledge of the proceeding.

**Respondent is found in default**

Part 230 (10)(c)(3) of the Public Health Law provides that "the licensee shall appear personally at the hearing and may be represented by counsel (emphasis supplied)." Respondent has filed no answer and he has not appeared personally in this proceeding. Respondent has ignored the statutory provisions of the Public Health Law with regard to appearance at this proceeding. Therefore, the Administrative Law Judge rules that Respondent is in default. Hence, the charges and specifications are admitted by Respondent with the same force and effect as if the charges and specifications had been sustained by the Committee after an evidentiary hearing.

The Administrative Law Judge conferred with the members of the Committee and disclosed to them the facts stated above. The Committee was told that the Administrative Law Judge ruled that upon the failure of Respondent to appropriately participate in the proceedings, each of the Specifications in the Notice of Hearing and Statement of Charges (see Exhibit 1) were deemed admitted by Respondent with the same force and effect as if the Committee had made the findings after an evidentiary hearing. Likewise, all statements of fact and the charges themselves, which were alleged in the Statement of Charges (Exhibit 1), were admitted by Respondent with the same force and effect as if the Committee had made the findings after an evidentiary hearing

The findings of fact which follow are derived from the assertions in the Statement of Charges, which are admitted. They are also derived from testimony and evidence the Committee found persuasive. (T. \_\_\_) refers to transcript pages. (Ex. \_\_\_) refers to exhibits..

## **FINDINGS OF FACT**

1. During the period from April 15, 1999 to August 30, 1999, Patient A received psychiatric treatment from the respondent. (T. 10-11 and Ex. 6)
2. Patient A's father paid one hundred and seventy-five dollars (\$175) for each visit to the Respondent. (T. 10-11 and Ex. 6)
3. The total paid for all the visits was six thousand and seventy-five dollars (\$6075). (T. 10-11 and Ex. 6)
4. Patient A's father attempted to seek reimbursement from his insurance company but was denied. The insurance company informed Patient A's father that in order to receive reimbursement, he needed bills with specific codes and amounts charged for services rendered. (T. 10-11 and Ex. 6)
5. Patient A's father repeatedly asked the Respondent for bills and/or receipts for the services provided. The Respondent failed to supply any such documentation or information. (T. 10-11 and Ex. 6)
6. The insurance provider also contacted the Respondent in an attempt to obtain this information but to no avail. The Respondent never provided any billing information to Patient A, Patient A's father or his insurance company. (T. 10-11 and Ex. 6)
7. During the investigation of the assertions made by Patient A, a letter dated May 25, 2000, was sent to Respondent from the Department of Health, Office of Professional Medical Conduct (hereinafter OPMC). The said letter requested the medical records for Patient A and was sent certified mail. (T. 10-11 and Ex. 4)
8. Respondent has never replied to the May 25 letter. (T. 12-13)
9. A second letter was sent to the Respondent from the Department of Health on October 4, 2000. (T. 16-19, Ex 5)

10. This letter informed Respondent that OPMC knew from the returned receipt that the May 25, 1999 certified letter had been received by respondent. (T. 16-19, Ex 5)
11. OPMC again requested Patient A's records, and informed the Respondent of the consequences for his failure to reply to correspondence from OPMC. (T. 16-19, Ex 5)
12. Respondent has never replied to the October 4 letter. (T. 16-19, Ex 5)
13. Respondent was sent a third letter from the Department of Health. This letter was dated November 16, 2000. (T. 30-33, Ex. 7)
14. In the November 16 letter, the Department again informed Respondent of the consequences of his failure to reply. (T. 30-33, Ex. 7)
15. Respondent was further informed that an investigation by OPMC had revealed that Respondent had been practicing medicine when his license registrations in both New York and New Jersey were both expired. (T. 30-33, Ex. 7)
16. The letter offered Respondent an opportunity to be interviewed no later than December 20, 2000. (T. 30-33, Ex. 7)
17. No response was ever received. (T. 30-33, Ex. 7)
18. Respondent's New York registration expired on March 31, 1999. (T. 27-28, Ex.3)
19. March 31, 1999 is approximately two weeks before Respondent commenced treatment of Patient A. (T. 27-28, Ex.3)

**CONCLUSIONS**  
**WITH REGARD TO**  
**FACTUAL ALLEGATIONS**

Pursuant to the instructions of the Administrative Law Judge, the Committee finds that the factual allegations are sustained with the same force and effect as if a full evidentiary hearing had been held and the Committee had deliberated after same.

Therefore:

**EACH Factual Allegation IS SUSTAINED**

**CONCLUSIONS**  
**WITH REGARD TO**  
**THE FIRST SPECIFICATION**

(Failing to provide requested documentation for the purposes of insurance reimbursement)

Having been found in default, Respondent has admitted each of the Specifications herein. In addition, the testimony by the investigators and the documents provided make it clear Respondent did not supply requisite documentation that would have allowed a patient to receive insurance reimbursement. This failure constitutes misconduct, as alleged.

Therefore,

The **First Specification** is **SUSTAINED**

**CONCLUSIONS**  
**WITH REGARD TO**  
**THE SECOND SPECIFICATION**

(Failing to respond to requests from the Department to provide patient records in a timely manner)

As in the First Specification, having been found in default, Respondent has admitted the Second Specification. In addition, the testimony by the investigators and the documents provided make it clear Respondent did not supply requisite documentation as directed by OPMC. This failure constitutes misconduct, as alleged.

Therefore,

The **Second Specification** is **SUSTAINED**

**CONCLUSIONS**  
**WITH REGARD TO**  
**THE THIRD SPECIFICATION**  
(Willfully Failing to register)

As in the other specifications, having been found in default, Respondent has admitted the Third Specification. In addition, the testimony by the investigators and the documents provided make it clear Respondent did not re-register as a physician in New York.

One element that could not be directly proven by the testimony was intent. Respondent was charged with willfully and therefore intentionally failing to register as a physician in this state. The Committee was instructed that similar to a charge of fraud, Respondent's intent may properly be inferred from facts found by the hearing committee.

The Committee has found that Respondent did not re-register. The Committee has also found Respondent was informed in writing, by OPMC, that he was not registered. The Committee has found that as of the Friday before this Tuesday hearing March 9, 2001, Respondent had still failed to register. Therefore, the Committee infers Respondent's failure to re-register was willful.

The failure by Respondent to keep his registration current constitutes misconduct, as alleged.

Therefore,  
The **Third Specification** is **SUSTAINED**

**CONCLUSIONS**  
**WITH REGARD**  
**TO**  
**PENALTY**

Respondent was given every reasonable opportunity to participate in this proceeding. It was demonstrated that he had actual knowledge of the investigation around him and the inevitability of a proceeding against him. Nevertheless, Respondent chose not to participate in the hearing. The very fact that Respondent has not made an appropriate appearance before this Committee continues the pattern of contempt for rules and regulations established by the evidence. Hence, the very fact Respondent has been found in default supports the charges against him.

The Trier of Fact is aware that Respondent has the right to remain silent during a proceeding. Therefore, his silence, in and of itself, cannot and does not form the basis for a finding of culpability in this proceeding. Had Respondent made an actual appearance, he would nevertheless have been free to remain mute. However, in this case Respondent has not chosen to remain silent, rather, he has chosen to fail to appropriately respond to these proceedings. Sitting mute is a right. Failing to answer questions is also a right. However, a failure to respond appropriately to the entire proceeding can, have significant consequences.

The Committee has found Respondent ignored requests from a patient for the paperwork required so that a patient could receive over \$6000 in insurance reimbursement. The Committee has also found Respondent failed on numerous occasions to reply to reasonable requests for information from the Department. The Committee has also found Respondent willfully failed to re-register his license to practice medicine. Respondent has shown a pattern of contempt for a patient, the Department and the State. The evidence indicates that Respondent believes he is immune from such basic responsibilities as keeping his license current. Respondent did not even have sufficient respect for the law to warrant some sort of appearance in these proceedings.

Still, there was no evidence of patient harm and this is Respondent's first offense. Had Respondent appeared, the Committee finds he may have had good reasons for why he committed the acts set forth herein. The Committee believes that since this is the only time Respondent has been charged with an infraction and there was no evidence of patient harm, Revocation is too harsh a sentence. Rather, the Committee believes the public would be better served by giving Respondent another four months to do what he was required to do previously. If Respondent fails to completely fulfill the requirements in the time period set, then his license to practice medicine in this state should be revoked.

**ORDER**

WHEREFORE, Based upon the foregoing facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges (attached to this Decision and Order as Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the State of New York is hereby **SUSPENDED** for a period of **FOUR MONTHS** from the effective date of this Order **or until Respondent fulfills the following obligations, whichever time is SHORTER**:

- a.) Respondent shall provide patient A with any requested documentation for the purposes of insurance reimbursement;
- b.) Respondent shall reply appropriately to all requests or instructions from the Director of the Office of Professional Medical Conduct in the manner set forth by the Director and in a timely manner;
- c.) Respondent shall register as a physician in this State.

Furthermore, it is hereby **ORDERED** that;

4. The Director of the Office of Professional Medical Conduct shall have sole authority to decide whether Respondent has met the above criteria and shall also have sole authority to demand whatever corroboration or additional information the Director believes is necessary to ascertain whether the requirements set forth above have been met;

Furthermore, it is hereby **ORDERED** that;

5. Should Respondent fail to meet the above requirements within the above referenced four month period, his license to practice medicine in the State of New York shall be **REVOKED** without any further proceedings of any kind;

Furthermore, it is hereby **ORDERED** that;

6. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

**DATED: Pittsford, New York**

        June 10        , 2001



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**RONALD A. GABEL, M.D. Chairperson**

**LYON H. GREENBERG, M.D.**

**JAMES P. MILSTEIN**

**To:**

**AMY B. MERKLEN, ESQ.**  
Assistant Counsel  
Bureau of Professional Medical Conduct  
Empire State Plaza  
Corning Tower - Room 2509  
Albany, New York 12237

**BARRY J. SAUL, M.D.**  
525 Western Highway  
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155 Country Road  
Cresskill, New Jersey 07626

**BARRY J. SAUL, M.D.**  
Apt 1B  
65 East 76<sup>th</sup> Street  
New York, NY 10021

**APPENDIX ONE**

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
BARRY J. SAUL, M.D. : CHARGES

-----X

BARRY J. SAUL, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 29, 1974, by the issuance of license number 120070 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. During the period from April 15, 1999 to August 30, 1999, Patient A received psychiatric treatment from the respondent. Patient A's father paid one hundred and seventy-five dollars (\$175) for each visit to the Respondent, totaling six thousand and seventy-five dollars (\$6075). Patient A's father attempted to seek reimbursement from his insurance company but was denied. The insurance company informed Patient A's father that he needed bills with specific codes and amounts charged for services rendered before he could get reimbursed. Patient A's father repeatedly asked the Respondent for bills and/or receipts for the services provided. The Respondent failed to supply any such documentation or information. The insurance provider also contacted the Respondent in an attempt to obtain this

information, but to no avail. The Respondent never provided any billing information to Patient A, Patient A's father or his insurance company.

B. During the investigation into Patient A's issue, a letter dated May 25, 2000, sent certified mail, was sent to the Respondent from the Department of Health, Office of Professional Medical Conduct (hereinafter OPMC) requesting the medical records for Patient A (Exhibit A). No response was forthcoming.

A second letter was sent to the Respondent from the Department of Health on October 4, 2000 (Exhibit B). This letter informed the Respondent that OPMC was aware of receipt of the May 25, 1999 certified letter, again requested Patient A's records, and informed the Respondent of the consequences for failing to do so. Again, there was and remains no response.

On November 16, 2000, the Respondent was sent a third letter from the Department of Health (Exhibit C). The Department informed the Respondent of the consequences of his failure to reply and that further investigation had revealed that the Respondent had been practicing medicine when his license registrations in both New York and New Jersey were both expired. Lastly, the letter offered and chance to be interviewed no later than December 20, 2000. No response was ever received.

C. Also, during the investigation of Patient A's issue, it was discovered that the Respondent let his license

registrations expire, not only in New York but in New Jersey as well. The Respondent's New York registration expired on March 31, 1999, approximately two weeks before he commenced treatment of Patient A. The Respondent's New Jersey license expired in 1997.

### **SPECIFICATION OF MISCONDUCT**

#### **FIRST SPECIFICATION**

##### **FAILURE TO PROVIDE DOCUMENTATION FOR PATIENT REIMBURSEMENT**

Respondent is charged with professional misconduct by reason of failing to provide a patient with requested documentation for the purposes of insurance reimbursement in violation of N.Y. Education Law §6530(42) in that Petitioner charges:

1. The allegations in paragraph A.

#### **SECOND SPECIFICATION**

##### **FAILURE TO RESPOND TO DEPARTMENT OF HEALTH REQUESTS**

Respondent is charged with professional misconduct by failing to respond to requests from the Department of Health to provide a patient records in a timely manner in violation of New York Education Law §6530 (28) in that Petitioner charges:

2. The allegations in paragraph B.

THIRD SPECIFICATION

FAILURE TO RENEW REGISTRATION

Respondent is charged with professional misconduct by willfully failing to register in violation of New York Education Law §6530 (12) in that Petitioner charges:

3. The allegations in paragraph B and C.

DATED: *February 13, 2001*

Albany, New York

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