STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

RECEIVED
MAY 16 1995
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

May 16, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza-Sixth Floor
New York, New York 10001

Teresita Esquivel Earley, M.D.
3 Peter Cooper Road, Apt. 1B
New York, New York 10010

Robert S. Asher, Esq.
295 Madison Avenue-Suite 700
New York, New York 10017

RE: In the Matter of Teresita Esquivel Earley

Dear Mr. Guenzburger, Dr. Earley and Mr. Asher:

Enclosed please find the Determination and Order (No. 95-104) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "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 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,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

IN THE MATTER OF TERESITA ESQUIVEL EARLEY, M.D. and TERESITA ESQUIVEL EARLEY, M.D., P.C.	:	DETERMINATION AND ORDER
		BPMC-95-104

A Notice of Hearing and Statement of Charges, both dated February 9, 1995, were served upon the Respondent **TERESITA ESQUIVEL EARLEY, M.D. STANLEY L. GROSSMAN, M.D.** (Chair), **GERALD S. WEINBERGER, M.D.** and **EUGENIA HERBST,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) Public Health Law. **JEFFREY ARMON, ADMINISTRATIVE LAW JUDGE**, served as Administrative Officer. A hearing was held on April 11, 1995. The Department of Health appeared by **DANIEL GUENZBURGER,** Assistant Counsel. The Respondent appeared and was represented by **ROBERT ASHER, ESQ.** 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 CASE

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. TERESITA ESQUIVEL EARLEY, M.D., Respondent, was authorized to practice medicine in New York State on March 30, 1979 by the issuance of license number 137523 by the New York State Education Department. TERESITA ESQUIVEL EARLEY, M.D., P.C., Respondent, has been authorized to render medical services for pecuniary profit by the New York State Department of Health since on or about October 8, 1986 (Ex. 1-2).

2. On or about June 29, 1994, Respondent, Teresita Esquivel Earley, M.D., P.C., was convicted upon a plea of guilty in the Supreme Court of the State of New York, County of New York, of grand larceny in the second degree, a Class C felony, in violation of Penal Law Section 155.40 (McKinney 1988).

3. On or about June 29, 1994, Respondent, Teresita Esquivel Earley, M.D., was convicted upon her plea of guilty in the Supreme Court of the State of New York, County of New York, of one count of falsifying business records in the first degree in violation of the Penal Law Section 175.10 (McKinney 1988). The Respondent plead guilty to making a false entry in the medical chart of an adult Medicaid patient with the intent to commit various crimes including but not limited to the crime of grand larceny as alleged in the first specification (Ex. 7).

4. On or about August 2, 1994, the Respondent was sentenced to five (5) years probation and was ordered to pay restitution in the amount of Four Hundred Thousand ($400,000.00) Dollars (Ex. 6).

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 concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Respondent had been convicted of an act constituting a crime under New York State law. It therefore voted to sustain both Specifications of professional misconduct as set forth in the Department's Statement of Charges (Ex. 1).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended for a two (2) year period, said suspension to be stayed, and that Respondent

be placed on probation in accordance with the Terms of Probation as set forth in Appendix II during said two (2) year period of suspension. In addition, Respondent shall be restricted from the private practice of medicine and shall be limited to a structured and supervised setting. This determination 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.

Respondent testified that she is currently a salaried employee of the Manhattan Children's Psychiatric Center and is supervised by a psychiatrist (T. 54-5). She stated she does not presently bill for individual services and would be willing to no longer bill for such services in the future (T.66). The Committee recognized the seriousness of Respondent's convictions and concluded that she should not be permitted to practice as a private practitioner in the future.

However, the Committee concluded that Respondent is performing a valuable service in assessing the needs of emotionally disturbed children. It noted that her convictions were based on her billing practices and did not involve the quality of the medical care that she provided. The Committee considered the testimony of two witnesses on her behalf, a special education teacher coordinator employed by the New York City Board of Education and a rehabilitation counselor employed at the Manhattan Children's Psychiatric Center. Both persons stated that they considered the Respondent to be a competent psychiatrist and caring individual (T. 28-9, 36-7). The Hearing Committee believed that it would not be in the best interests of the public to prevent the Respondent from remaining in her current supervised position where she is providing a valuable public service. It therefore concluded that restricting Respondent to a supervised setting and prohibiting her from any future private practice would be the most appropriate penalty in this case.

ORDER

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

1. The specifications of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) are **SUSTAINED.**

2. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of two (2) 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 she shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.

4. Respondent's license to practice medicine in New York State hereby is, permanently **RESTRICTED** from private practice and, **LIMITED** to a supervised setting.

Dated: Albany, **New York**
May 12, **1995**

STANLEY L. GROSSMAN, M.D. (Chair)

GERALD S. WEINBERGER, M.D.
EUGENIA HERBST

TO: Daniel Guenzburger, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza-6th Floor
New York, New York 10001

Teresita Esquivel Earley
3 Peter Cooper Road, Apt. 1B
New York, New York 10010

Robert S. Asher, Esq.
295 Madison Avenue, Suite 700
New York, New York 10017

APPENDIX I

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

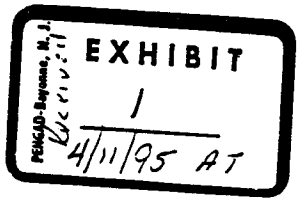
IN THE MATTER

OF

TERESITA ESQUIVEL EARLEY, M.D. and

TERESITA ESQUIVEL EARLEY, M.D., P.C.

NOTICE OF REFERRAL PROCEEDING



TO: TERESITA ESQUIVEL EARLEY, M.D.
222 East 24th Street - Apt. 1A
New York, New York 10010

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. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on April 11, 1995, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor Hearing Room, 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.

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, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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, no later than fourteen days prior to the scheduled date of the Referral Proceeding, as indicated above, 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.

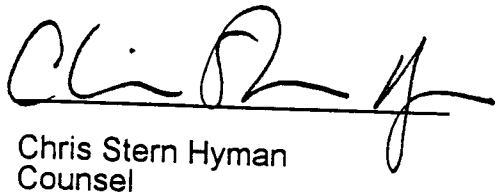
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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: New York, New York
February 9, 1995



Chris Stern Hyman
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

DANIEL GUENZBURGER
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2617

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

IN THE MATTER OF TERESITA ESQUIVEL EARLEY, M.D. and TERESITA ESQUIVEL EARLEY, M.D., P.C.	STATEMENT OF CHARGES

TERESITA ESQUIVEL EARLEY, M.D., Respondent, was authorized to practice medicine in New York State on March 30, 1979 by the issuance of license number 137523 by the New York State Education Department. TERESITA ESQUIVEL EARLEY, M.D., P.C., Respondent, has been authorized to render medical services for pecuniary profit by the New York State Department of State since on or about October 8, 1986.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

1. Respondent, TERESITA ESQUIVEL EARLEY, M.D., P.C., is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(1) (McKinney Supp. 1995), in that the Respondent was convicted of an act constituting a crime under New York State law, specifically:

   On or about June 29, 1994 , Respondent, Teresita Esquivel Earley, M.D., P.C., was convicted upon a plea of guilty in the Supreme Court of the State of New York, County of New York, of grand larceny in the second degree in violation of Penal Law Section 155.40 (McKinney 1988). A person is guilty of grand larceny in the second degree when he steals property with a value in excess of fifty thousand dollars. Grand Larceny in the second degree is a Class C felony. Pursuant to Penal Law Section 10.7 (McKinney 1988), the

definition of the term "person" includes a private corporation such as the Respondent.

Respondent was convicted for having submitted false claims to the New York State Medicaid program, through the acts of its high managerial agent and sole shareholder, Teresita Esquivel Earley, M.D. Respondent plead guilty to intentionally misrepresenting on claim forms that it had provided 45 minute psychotherapy sessions to various Medicaid patients, when in fact, such services had not been provided. By these acts, the State of New York paid the Respondent over four hundred thousand dollars ($400,000.00) to which it was not entitled.

SECOND SPECIFICATION

2. Respondent, TERESITA ESQUIVEL EARLEY, M.D., is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(i) (McKinney Supp. 1995), i n that she was convicted of an act constituting a crime under New York State law, specifically:

On or about June 29, 1994, Respondent, Teresita Esquivel Earley, M.D., was convicted upon her plea of guilty in the Supreme Court of the State of New York, County of New York, of one count of falsifying business records in the first degree in violation of Penal Law Section 175.10. (McKinney 1988). A person is guilty of falsifying business records in the first degree when he intentionally makes a false entry in a business record and when his intent to defraud includes an intent to commit another crime. The Respondent plead guilty to making a false entry in the medical chart of an adult Medicaid patient with the intent to commit various crimes including but not limited to the crime

of grand larceny as alleged in the first specification.

On or about August 2, 1994, the Respondent was sentenced to 5 years probation and was ordered to pay restitution in the amount of four hundred thousand dollars ($400,000.00).

DATED: February 9, 1995
New York, New York

CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

TERMS OF PROBATION

1. Respondent shall conduct herself at all times in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by her profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

5. Respondent shall submit written proof to the Director of the OPMC in writing at the address indicated above that she has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice in New York State, she shall submit written proof to the Director of the OPMC that she has notified the New York State Education Department of such fact.

6. In the event that Respondent leaves New York to reside or practice outside the State, she shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of her departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

7. Respondent shall also comply with all terms of her sentence imposed by the Supreme Court of the State of New York, County of New York, on or about August 2, 1994.

8. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.

9. Respondent shall comply with all terms, conditions, restrictions, and penalties to which she is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.