



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

June 28, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street – 4th Floor
Hedley Building
Troy, New York 12180

Jitendra C. Shah, M.D.
6 Holsman Road
Staten Island, New York 10301

Jitendra C. Shah, M.D.
8502 Ft. Hamilton Parkway
Brooklyn, New York 11209

Nathan L. Dembin, Esq.
255 Broadway – Suite 1400
New York, New York 10007

RE: In the Matter of Jitendra C. Shah, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-195) 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, flowing style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC #00-195

IN THE MATTER

OF

JITENDRA C. SHAH, M.D.

A Notice of Referral Proceeding and Statement of Charges, both dated April 10, 2000, were served upon the Respondent, **JITENDRA C. SHAH, M.D.**

ANDREW J. MERRITT, M.D., Chairperson, **NANCY J. STUBBE, M.D.** and **D. MARISA FINN**, duly designated member 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on June 14, 2000, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **NATHAN L. DEMBIN, ESQ.**, 255 Broadway, Suite 1400, New York, New York 10007.

Evidence was received and transcripts of these proceeding 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)(e). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such case, 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(ii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Simon Saada, M.D.
Prital Kang, M.D.
Jitendra C. Shah, M.D., the Respondent

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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **JITENDRA C. SHAH, M.D.**, the Respondent, was authorized to practice medicine in New York state on July 20, 1979, by the issuance license number 138990 by the New York State Education Department. (Pet's. Ex. 3)

2. On December 13, 1999, in the United States District Court, Southern District of New York, the Respondent was found guilty of one (1) count of Medicare kickbacks, in violation of Title 42, United States Code §3120(a), and was sentenced to three (3) years probation, one hundred (100) hours of community service each year of probation, and fined \$20,000.00. (Pet's. Ex. 4)

VOTE OF HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by reason of having been convicted of an act constituting a crime under federal law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on December 13, 1999, the Respondent was convicted in federal court of one (1) count of medicare kickbacks. He was sentenced to three (3) years probation; one hundred (100) hours community service each year of probation and fined Twenty Thousand (\$20,000.00) Dollars.

The Respondent has also been notified that he being excluded from participation in the Medicare program for a period of five (5) years, and he is currently appealing that decision.

There are some mitigating factors in the record which the Hearing Committee has taken into consideration in determining the nature and severity of the penalty to be imposed upon the Respondent.

- The Respondent has already been sentenced to three (3) years probation by the federal court and has paid a \$20,000.00 fine.
- The charges in this case do not reflect on the Respondent's competence as a practicing physician.
- With the exception of the instant charge, the Respondent's medical career has been without blemish and is commendable for its value to the community.
- The Respondent is viewed by his colleagues as a highly qualified and committed physician.

- The Hearing Committee is convinced that the Respondent is truly contrite and regrets his violations of federal law.
- The Hearing Committee is convinced that the Respondent will not repeat such conduct.

After due consideration of the full spectrum of penalties available pursuant to statute the Hearing Committee determines unanimously, (3-0), that the Respondent's misconduct warrants a penalty of a three (3) year suspension, staying said suspension, and placing the Respondent on probation under terms and conditions as hereinafter set forth in the ORDER.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for three (3) years, suspension **STAYED**.

2. The Respondent's is placed on probation for a period to run concurrent with his federal probation under the following terms and conditions:

- Respondent 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 and obligations imposed by law and by his profession.

- Respondent shall submit written notification of the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street, Fourth Floor, Troy, New York 12180; said notice is to include a full description of any employment and practice; professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
- Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by state rules and regulations.
- Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
- Respondent shall fully cooperate with and respond in a timely manner to request from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

- The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

3. The Respondent shall comply with all of the terms and conditions of probation as prescribed by the Federal Court. The Respondent shall cause his federal probation officer to submit semi-annual reports to the Office of Professional Medical Conduct reporting on his compliance or failure to comply with any or the terms of his federal probation and report on any changes in the duration or terms of his federal probation.

4. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to this Order and shall assume and bear all cost related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

5. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: 6/26, 2000
Syracuse, New York


ANDREW J. MERRITT, M.D., Chairperson

NANCY J. STUBBE, M.D.
D. MARISA FINN

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

IN THE MATTER
OF
JITENDRA C. SHAH, M.D.

STATEMENT
OF
CHARGES

JITENDRA C. SHAH, M.D., the Respondent, was authorized to practice medicine in New York state on July 20, 1979, by the issuance of license number 138990 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 13, 1999, in the United States District Court, Southern District of New York, Respondent was found guilty one (1) count of medicare kickbacks, in violation of Title 42, United States Code §1320(a), and sentenced to three (3) years probation, one hundred (100) hours of community service each year of probation, a \$20,000.00 fine, and \$6,489.60 restitution.

SPECIFICATION

Respondent violated New York State Education Law §6530(9)(a)(ii) by reason of having been convicted of an act constituting a crime under federal law in that the Petitioner charges:

1. The facts in paragraphs A.

DATED: *Apr 10*, 2000
Albany, New York

Peter D. Van Buren
PETER D. VANBUREN
Deputy Counsel
Bureau of Professional
Medical Conduct