



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

March 8, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph Muigai, P.A.
P. O. Box 168
Watertown Correctional Facility
Watertown, New York 13601

Karen Carlson, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

RE: In the Matter of Joseph Muigai, P.A.

Dear Mr. Muigai and Ms. Carlson :

Enclosed please find the Determination and Order (No. BPMC-96-44) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

NEW YORK STATE DEPARTMENT OF HEALTH 1996

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.

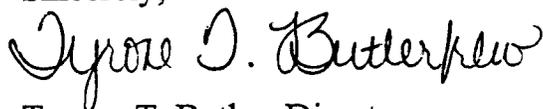
The notice of review served on the Administrative Review Board should be forwarded to:

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:crc
Enclosure

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

COPY

IN THE MATTER
OF
JOSEPH MUIGAL, P.A.

DETERMINATION
AND
ORDER

BPMC-96-44

A Notice of Referral Proceedings and Statement of Charges, both dated December 29, 1995 were served upon the Respondent, **JOSEPH MUIGAL, P.A.** **MS. TRENA DeFRANCO**, Chairperson, **MARGERY W. SMITH, M.D.** and **STEVEN V. GRABIEC, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on February 7, 1996. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **KAREN E. CARLSON, ESQ.**, Assistant Counsel, of Counsel. The Respondent failed to appear.

Evidence was received 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(i). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as 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.

1. Joseph Muigai, P.A., the Respondent, was registered to practice as a Physician Assistant in New York State on October 20, 1978, by the issuance of license number 001016 by the New York State Education Department (Petitioner's Exhibits 1 and 3).
2. On or about June 5, 1995, the Respondent was convicted, by plea of guilty, of one count of Grand Larceny in the First Degree, a Class B felony, in violation of New York Penal Law §155.42, and one count of Grand larceny in the Second Degree, a Class C felony, in violation of New York Penal Law §155.40(1), in the New York Supreme Court, New York County (Petitioner's Exhibit 4).

The conviction was based on a finding that the Respondent had submitted false claims to the State of New York Medical Assistance Program (Medicaid) in excess on one million dollars. Those claims falsely represented that various physicians had examined, treated and prescribed pharmaceuticals to Medicaid recipients when in fact the Medicaid recipients had not been so examined, treated or prescribed for (Petitioner's Exhibit 4).

3. On June 20, 1995, the Respondent was sentenced to two and one-half years to seven and one-half years incarceration. The Respondent is currently incarcerated in the Watertown Correctional Facility, Watertown, New York (Petitioner's Exhibits 4 and 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

CRIMINAL CONVICTION

The Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(a)(i) (McKinney Supp. 1995) by reason of his having been convicted of committing an act constituting a crime under New York State Law.

SUSTAINED (Vote 3-0).

DETERMINATION OF THE HEARING COMMITTEE

The Respondent was convicted of a serious crime arising from a scheme to defraud the Medicaid Program.

The Respondent is currently in jail and did not appear at the present hearing. He did submit a written Answer, dated January 29, 1996, along with other documents attesting to his participation in the Prison Fellowship and Gospel Echoes Team Programs.

The Hearing Committee has reviewed the entire record and finds no evidence in mitigation of the charges.

The Hearing Committee determines that the Respondent's registration to practice as a Physician Assistant in the State of New York should be REVOKED. This Determination is based on the violations found in this present case.

* * *

The record indicates that BY ORDER of the Commissioner of Education (Original Order No. 5856), dated October 15, 1986, the Respondent's registration to practice as a Physician Assistant in the State of New York was REVOKED. The Commissioner of Education's ORDER was based on a finding that the Respondent was guilty of professional misconduct in that, on November 15, 1984 the Respondent was convicted upon his plea of guilty to the crime of conspiracy in the Fifth Degree in the Supreme Court of the State of New York, County of New York, in violation of Section 105.05 of the Penal Law of the State of New York, a Class A misdemeanor.

BY ORDER of the Commissioner of Education (Original Order Nos. 7956/5886), dated December 22, 1987, the Respondent's application for reconsideration was granted and the Order revoking the Respondent's registration was deemed vacated.

BY ORDER of the Commissioner of Education (Original Order No. 8406) dated September 28, 1988, the Respondent was again found guilty of the charges, but the penalty was modified to a three year suspension with the last two years of the suspension stayed.

* * *

Given the Respondent's history of professional misconduct, the Hearing Committee strongly recommends that any future application by the Respondent for restoration of his registration to practice as a Physician Assistant in the State of New York be DENIED.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's registration to practice as a Physician Assistant in the State of New York is hereby **REVOKED.**

2. 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: 3/1/96 .

Ms. Trena DeFranco

MS. TRENA DeFRANCO
Chairperson

MARGERY W. SMITH, M.D.
STEVEN V. GRABIEC, M.D.



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

-----X
IN THE MATTER : NOTICE OF
OF : REFERRAL
JOSEPH MUIGAI, P.A. : PROCEEDING
-----X

TO: Joseph Muigai, P.A.
P.O. Box 168
Watertown Correctional Facility
Watertown, New York 13601

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 the 7th day of February, 1996 at 10:00 a.m. in the forenoon of that day at the Empire State Plaza, Cultural Education Center, Room E, Albany, New York 12237.

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, on or before January 24, 1996.

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 January 24, 1996 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: Albany, New York
December 29, 1995

Peter D. Van Buren

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Karen Eileen Carlson
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
JOSEPH MUIGAI, P.A. : CHARGES

-----X

JOSEPH MUIGAI, P.A., the Respondent, was registered as a Physician Assistant in New York State on October 20, 1978, having been issued registration number 001016 by the New York State Education Department. The Respondent is currently registered as a Physician Assistant for the period January 1, 1993 through December 31, 1995 with a registration address of Apartment 16A, 45 West 132nd Street, New York, New York 10037.

FACTUAL ALLEGATIONS

1. Respondent, on or about June 5, 1995, was convicted, by plea of guilty, of one count of Grand Larceny in the First Degree, a class B felony in violation of New York Penal law §155.42, and one count of Grand Larceny in the Second Degree, a class C felony in violation of New York Penal law §155.40(1), in the New York Supreme Court, New York County.
2. More specifically, Respondent submitted false claims to the State of New York Medical Assistance Program in excess of one million dollars. Those claims falsely

represented that various physicians examined, treated, and prescribed pharmaceuticals to Medicaid recipients when in fact the Medicaid recipients had not been so examined, treated or prescribed for.

3. Respondent was sentenced on June 20, 1995 to two and one-half years to seven and one-half years incarceration. Respondent is currently incarcerated in the Watertown Correctional Facility, Watertown, New York.

SPECIFICATION

CRIMINAL CONVICTION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(a)(i) (McKinney Supp. 1995) by reason of his having been convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

1. The facts in Paragraphs 1, 2 and 3.

DATED: *December 29*, 1995
Albany, New York

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