



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

RECEIVED
NOV 15 1994
OFFICE OF
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Morales Bloch, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza-Sixth Floor
New York, New York 10001

Daniel H. Murphy II, Esq.
123 William Street
Suite 2301
New York, New York 10038

Effective date: 11/21/94

RE: In the Matter of James Rich, P.A.

Dear Ms. Bloch and Mr. Murphy:

Enclosed please find the Amended Determination and Order (No. 94-226) of the Hearing Committee in the above referenced matter. This Amended 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he 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 Amended Determination and Order.

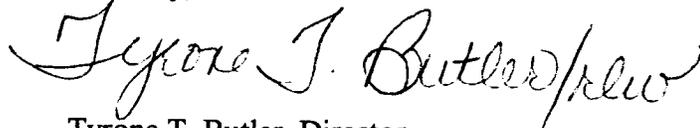
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler/plw". The signature is written in dark ink and is positioned above the typed name and title.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

**IN THE MATTER
OF
JAMES RICH, P.A.**

**AMENDED
DETERMINATION
AND
ORDER
BPMC-94-226**

A Notice of Referral Proceedings and Statement of Charges, both dated August 25, 1994 were served upon the Respondent, James Rich, P.A.

BENJAMIN WAINFELD, M.D., Chairman, **GERALD M. BRODY, 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 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 October 13, 1994. The Department of Health appeared by **PETER J. MILLOCK, ESQ.**, General Counsel, by **CLAUDIA MORALES BLOCH, ESQ.**, Associate Counsel, of Counsel. The Respondent appeared in person and was represented by Daniel H. Murphy II, Esq., 123 William Street, Suite 2301, New York, N.Y., 10038.

Evidence 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)(b). 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 parentheses 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. James Rich, P.A. the Respondent, was authorized to practice as a Physician's Assistant in New York State on September 26, 1983 by the issuance of license number 002311 by the New York Education Department (Pet's. Exs. 1 and 2).

2. On or about December 16, 1991, the Respondent was convicted, upon his plea of guilty, of one (1) count of Conspiracy to Commit Medicaid Fraud, in violation of 18 USC 371; and one (1) count of Mail Fraud, in violation of 18 USC 1341.

3. Respondent's Exhibit A is a letter dated September 27, 1993, from the United States Attorney, Southern District of New York to the Honorable John S. Martin, United States District Judge, Southern District of New York. The letter reads in part:

"To his credit, James Rich was one of the first participants in the Medicaid fraud scheme to cooperate with the Government's investigation of Sohail Khan. Although Rich did not sign a cooperation agreement until December 10, 1991, he began his

cooperation as soon as he was contacted by federal agents in September 1991. Rich explained in detail the entire workings of the Khan clinics and provided the names of other participants. Rich's early guilty plea substantially advanced the investigation and saved substantial prosecutorial and judicial resources.

During the twenty months that he cooperated with the Government, Rich always made himself available to the United States Attorney's Office, often working well into the evening and on weekends to provide information and to review and organize the voluminous patient charts and other records seized from the four Khan clinics. James Rich assisted in obtaining Indictment 92 Cr. 1001 (JSM) by testifying before the grand jury investigating the Khan organization. His trial testimony was clear, candid and fully corroborated.

The Government respectfully submits that James Rich's timely and extensive cooperation over the course of two years should be considered by the Court in fashioning a sentence in this case" (Resp.'s. Ex. A).

4. On October 20, 1993, the court ordered that the Respondent be imprisoned for three months and thereafter be placed on supervised release for a period of three years. In addition, the court ordered that the Respondent serve a three month period of home detention; to perform 600 hours of community service and to make restitution to the State of New York in the amount of \$100,000.00 (Petitioner's Ex. 5).

5. The Respondent has already served the three month prison term and the three month period of home confinement (Resp's. Ex. H).

6. Respondent's Exhibit H is a letter dated October 6, 1994, from the probation office, United States District Court, Southern District of New York to the New York State Department of Health, State Board for Professional Conduct. The letter reads in part:

"The undersigned was assigned to supervise Mr. Rich during his three (3) month period of home confinement, which expired on July 20, 1994. During this brief but productive time period, Mr. Rich complied fully with the conditions of his release. Mr. Rich appears to have learned a valuable lesson from his mistakes of the past.

Mr. Rich will be under supervision in this district until April 14, 1997. In the opinion of this officer, Mr. Rich will realize personal and professional growth if he continues on his current path" (Pet's. Ex. H).

7. The Respondent has admitted that he had had a serious cocaine habit but that he is currently drug free. He has participated in a drug rehabilitation program at Bethelite - Community Church, 36-38 West 123rd Street, New York, New York (Resp's. Exs. A and B).

DETERMINATION OF THE HEARING COMMITTEE

SPECIFICATION

The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530 (9) (a) (iii) (McKinney Supp. 1994) in that the Respondent was convicted of committing an act constituting a crime under federal law:

SUSTAINED

The Hearing Committee has reviewed the entire record in this case to determine an appropriate penalty.

While it has been determined that the Respondent was convicted of one (1) count of

conspiracy to commit Medicaid fraud and one (1) count of mail fraud, the Hearing Committee believes that there are mitigating circumstances which should be considered.

The record indicates that the Respondent fully cooperated with the federal authorities in their investigation; he has served his prison and home detention sentences; he has complied fully with the conditions of his release; he will be under the supervision of the Federal District Probation office until April 14, 1997 and he has participated in a drug rehabilitation program at Bethelite Community Church.

Considering all of the circumstances of this case, the Hearing Committee determines that an appropriate penalty would be a three year suspension, suspension stayed, with the Respondent placed on probation under the terms hereinafter set forth.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice as a Physician's Assistant in the State of New York is **SUSPENDED** for a period of three years, **SUSPENSION STAYED** subject to the following conditions.

Unless otherwise indicated, these conditions shall remain in effect for a period of three years after the effective date of this Order.

2. The Respondent shall remain drug and alcohol free.

3. The Respondent shall be monitored by a licensed physician approved by the Director of the Office of Professional Medical Conduct.

4. The Petitioner shall submit the name of a successor monitoring licensed physician to the Director of the Office of Professional Medical Conduct for approval within seven (7) days of the Respondent's becoming aware that the initial monitor will no longer serve as a monitoring physician.

5. The monitoring physician, or an appointed successor monitoring physician, shall monitor the Respondent's compliance with the terms of probation imposed and cause to be performed, at six times a month, unannounced urine tests for the presence of alcohol and/or drugs in the Respondent.

The monitoring physician, shall immediately notify the Office of Professional Medical Conduct if the Respondent refuses such a test.

If such a test reveals, or the monitoring physician otherwise learns that the Respondent is not drug and alcohol free, the monitoring physician shall immediately notify the Office of Professional Medical Conduct.

Every three (3) months, the monitoring physician shall submit to the Office of Professional Medical Conduct a report certifying compliance with each of the terms of probation by the Respondent or describing in detail any failure to comply. The report shall include the results of all tests for the presence of drugs or alcohol performed during that three (3) month period.

6. The Respondent shall be supervised in his practice as a Physician's Assistant by a licensed physician who is familiar with the Respondent's history of drug or alcohol abuse and with the terms of this Order or by a successor licensed physician approved by the Director of the Office of Professional Medical Conduct.

7. The Respondent shall obtain a successor supervising licensed physician, subject to the approval of the Director of the Office of Professional Medical Conduct, within seven (7) days of the Respondent's becoming aware that his initial supervisor will no longer serve as a supervising physician.

8. The supervising physician, or an approved successor supervising physician, shall supervise the Respondent's practice as a Physicians Assistant and shall establish the capability of doing a "stat" screen for the presence of drugs or alcohol in the Respondent in response to any complaint or observation that drugs or alcohol may be responsible for Respondent's behavior. The supervising physician, shall submit a report to the Office of Professional Medical Conduct every three (3) months regarding the quality of the Respondent's medical practice, any unexplained absences from work and compliance or failure to comply with each condition described herein.

9. The Respondent will continue in treatment with Bethelite Community Church Rehabilitation Program or an approved successor treating health care professional approved by the Director of the Office of Professional Medical Conduct.

Said Rehabilitation Program shall submit a report to the Office of Professional Medical Conduct every three (3) months certifying compliance with treatment by the Respondent and describing in detail any failure to comply.

Said Rehabilitation program shall immediately report to the Office of Professional Medical Conduct any discontinuation of treatment by the Respondent.

Said Rehabilitation Program shall immediately report to the Office of Professional Medical Conduct any significant pattern of abuses from scheduled treatment sessions.

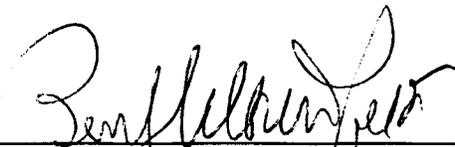
If the treatment afforded by Bethelite Community Church becomes unavailable, the Petitioner will submit the name of a successor treating program to the Director of the Office of Professional Medical Conduct for approval within seven (7) days of the Respondent's becoming aware that Bethelite Community Church will no longer serve as Respondent's treating program.

10. Failure to comply with any of the conditions above will result in automatic reinstatement of the three year suspension of the Respondent's license to practice as a Physician's Assistant upon notice to the Respondent.

11. 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: New York, New York

11/10, 1994



BENJAMIN WAINFELD, M.D.
Chairman

GERALD M. BRODY, M.D.
EUGENIA HERBST

TO: Daniel H. Murphy II, Esq.
123 William Street
Suite 2301
New York, New York 10038

Claudia Morales Bloch, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: JAMES RICH, P.A. : PROCEEDING
: :
-----X

TO: JAMES RICH, P.A.
c/o Bethelite Community Church
26 West 123rd Street
New York, NY 10027

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-303 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 13th day of October, 1994 at 10:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10027.

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 taken and the witnesses at the proceeding will be sworn and examined.

Defitioner's Ex 1
Ex Ev. d
10-13-94
MS

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 September 29, 1994.

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 September 29, 1994, 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 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

August 25, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

CLAUDIA MORALES BLOCH
Associate Counsel
212-613-2615

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JAMES RICH, P.A. : CHARGES
-----X

JAMES RICH, P.A., the Respondent, was authorized to practice as a Physician's Assistant in New York State on September 26, 1983 by the issuance of license number 002311 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice as a physician's assistant for the period January 1, 1993 through December 31, 1995 at c/o Bethelite Community Church, 36 West 123rd Street, New York, NY 10027.

SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(ii) (McKinney Supp. 1994), in that Respondent was convicted of committing an act constituting a crime under federal law, specifically:

On or about December 16, 1991, Respondent was convicted, upon his plea of guilty, of two (2) ^{ONE (1)}

Conspiracy to Commit Medicaid Fraud, in violation of 18 USC 371; and one (1) count of Mail Fraud, in violation of 18 USC 1341; in that, in or about August, 1990 through in or about July, 1991, Respondent together with others, participated in a scheme to operate medical clinics for the purpose of obtaining payments directly and indirectly from the Medicaid system by submitting bills, and causing others to submit bills, to the New York State Department of Social Service for medical services, drug prescriptions, and laboratory tests which he knew to be, and were in fact, medically unnecessary. Judgement was entered, after sentencing, on or about November 1, 1993.

DATED: New York, New York

August 25, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct