



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

August 11, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Cindy M. Fascia, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza

Barry Gold, Esq.
Thuillez, Ford, Gold and Conolly
Suite 1500 90 State Street
Albany, New York

Alan Schankman, M.D.
5434 Jed Smith Road
Hidden Hills, California 91302

RECEIVED
AUG 13 1995
MEDICAL CONDUCT DIV.

RE: In the Matter of Alan Schankman, M.D.

Effective Date: 09/20/95

Dear Ms. Fascia, Mr. Gold and Dr. Schankman:

Enclosed please find the Determination and Order (No. 95-170) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

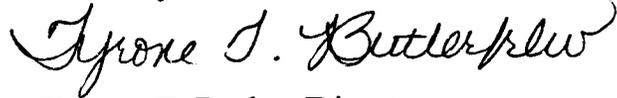
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

STATE OF NEW YORK
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
-OF-
ALAN SCHANKMAN, M.D.

DECISION
AND
ORDER
OF THE
HEARING COMMITTEE
BPMC ORDER NO. 95-170

Respondent

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated June 21, 1995 which were served upon **ALAN SCHANKMAN, M.D.**, (hereinafter referred to as "Respondent"). **ANTHONY C. BIONDI, M.A.**, Chairperson, **GARY J. HORWITZ, M.D.**, and **LEO FISHEL, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on July 26, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "the State" or "Petitioner") appeared by **JEROME JASINSKI**, Acting General Counsel, by **CINDY M. FASCIA, ESQ.**, Associate Counsel, Bureau of Professional Medical Conduct. Respondent appeared in person and by Thuillez, Ford, Gold and Conolly, **BARRY GOLD, ESQ.**, of counsel Evidence was received. Testimony was received under oath. Legal arguments were heard. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This 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 prior professional disciplinary action or criminal conviction. The scope of this 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)(iii) [Having been found guilty of a crime under the law of another jurisdiction which would be a crime under New York state law]. The charge herein arises from a conviction by jury verdict of thirty-six counts of Medicare fraud. The allegations in this proceeding and the underlying conviction and consequences are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS

Respondent was convicted of Medicare fraud in California. He was found guilty of stealing \$56,000. He was sentenced to over a year in prison. The Committee finds the sentence of particular note since it is unusual for a so-called "white collar" criminal to be sentenced to actual incarceration. The Committee concludes that the Court considered Respondent's acts to be without mitigation. The very fact Respondent was convicted of criminal, as opposed to civil charges, indicates that the Prosecution in California established beyond a reasonable doubt that Respondent intentionally took these funds. Finally, the Committee finds Respondent, in his testimony before them, showed not a scintilla of remorse. It is the conclusion of this Committee, based upon Respondent's overall presentation during his testimony, that he presents a high risk

that he would again violate his license to practice medicine. Ultimately, it is the province of this body to protect the public from unprincipled physicians. It is the conclusion of this Committee that Respondent poses too great a risk to the public to be allowed to practice medicine in the state of New York. While the California authorities have elected to suspend Respondent's license and monitor him, this body is not bound to that remedy and elects to impose a sentence which it concludes will better protect the people of this state. Accordingly, the Committee will revoke Respondent's license to practice medicine in this state.

ORDER

WHEREFORE, Based upon the forgoing facts and conclusions,

IT IS HEREBY ORDERED THAT:

1. The Factual allegations in the Statement of Charges 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 **REVOKED**;
Furthermore, it is hereby **ORDERED** that;

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

Dated:
Rochester, New York

August 10, 1995



ANTHONY C. BIONDI, M.A., Chairperson
GARY J. HORWITZ, M.D.
LEO FISHEL, M.D.

TO: CINDY M. FASCIA, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

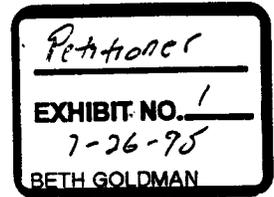
BARRY GOLD, ESQ.
Thuiliez, Ford, Gold and Conolly
Suite 1500 90 State St.
Albany N.Y.

ALAN SCHANKMAN, M.D.
5434 Jed Smith Rd
Hidden Hills, California 91302



APPENDIX ONE

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



-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
ALAN SCHANKMAN, M.D. : PROCEEDING

-----X

TO: ALAN SCHANKMAN, M.D.
5434 Jed Smith Road
Hidden Hills, California 91302

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 301-307 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 26th day of July, 1995 at 10:00 o'clock in the forenoon of that day at the Cultural Education Building, Conference Room E, Concourse Level, Empire State Plaza, 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 July 12, 1995.

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 July 12, 1995 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
June 21, 1995

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

Inquiries should be addressed to:

CINDY M. FASCIA
Associate 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
ALAN SCHANKMAN, M.D. : CHARGES

-----X

ALAN SCHANKMAN, M.D., the Respondent, was authorized to practice medicine in New York State on July 2, 1973 by the issuance of license number 116354 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. Respondent, on or about December 16, 1991 in the Superior Court of California, County of Los Angeles was convicted by jury verdict of thirty six (36) counts of Grand Theft of Personal Property, in violation of California Penal Code Section 487(1). Respondent was also found to have intentionally taken funds and property of Medicare and the U.S.A., in violation of California Penal Code §§12022.6(b) and 1203.045(a).

2. Respondent, pursuant to his criminal conviction, was sentenced on or about January 28, 1992 to sixteen (16) months imprisonment on each count, said terms to run concurrently. Respondent was also fined three hundred fifty thousand (\$350,000.00), plus penalty assessments of two hundred eighty thousand dollars (\$280,000.00). Respondent was ordered to pay

restitution in the amount of fifty-six thousand dollars (\$56,000.00).

3. Respondent was found to have willfully and unlawfully misbilled Medicare for surgical procedures on numerous patients as set forth in the Information in said criminal proceeding.

4. The conduct for which Respondent was criminally convicted in California would, if committed in New York State, constitute a crime under the laws of New York State specifically, New York Penal Law §155.25 and/or §155.30 and/or §155.35.

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(a)(iii), by reason of his being convicted of committing an act constituting a crime under the law of another jurisdiction which, if committed within this state, would have constituted a crime under New York State law in that Petitioner charges:

1. The facts in Paragraphs 1, 2, 3 and/or 4.

DATED: June 21, 1995
Albany, New York


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