



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson E. Rockefeller Empire State Plaza

Albany, New York 12237

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

May 9, 1995

RECEIVED
MAY 10 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ariel R. Mattei, M.D.
Respondent
2675 Grand Concourse-Apt. 2G
Bronx, New York 10468

Ralph Bavaro, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza-Sixth Floor
New York, New York 10001

RE: In the Matter of Ariel R. Mattei, M.D.

Effective Date: 05/16/95

Dear Dr. Mattei and Mr. Bavaro:

Enclosed please find the Determination and Order (No. 95-100) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

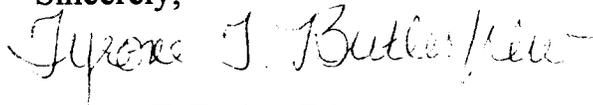
The notice of review served on the Administrative Review Board should be forwarded to:

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

**IN THE MATTER
OF
ARIEL R. MATTEI, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-95-100

HILDA RATNER, M.D., (Chair), **ROBERT J. O'CONNOR, M.D.**, and **MICHAEL A. GONZALEZ, R.P.A.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **RALPH BAVARO, ESQ.**, Associate Counsel.

Respondent, **ARIEL R. MATTEI, M.D.**, appeared personally at the hearing on his own behalf and was not represented by counsel.

A hearing was held on March 21, 1995. Evidence was received and examined, a witness was sworn or affirmed and examined. A transcript of the proceedings was made. After consideration of the entire record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [hereinafter P.H.L.]

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

ARIEL R. MATTEI, M.D., (hereinafter "Respondent") is charged with professional misconduct within the meaning of §6530(9)(a)(ii) of the Education Law of the State of New York (hereinafter "Education Law"), to wit: professional misconduct ... by reason of being convicted of committing an act constituting a crime under Federal Law (Petitioner's Exhibit # 1 and §6530[9][a][ii] of the Education Law).

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

¹ P.H.L. §230(10)(p), fifth sentence.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence or testimony, if any, was considered and rejected in favor of the cited evidence. Some evidence and testimony was rejected as irrelevant. Unless otherwise noted, all Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on June 4, 1965, by the issuance of license number 094326 by the New York State Education Department (Petitioner's Exhibits # 1 and # 2)².
2. Respondent was last registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 (Petitioner's Exhibit # 2).
3. Samuel Padmore unsuccessfully attempted to personally serve Respondent with a Notice of Referral Proceeding and a Statement of Charges on 2 separate occasions in February and 3 times on March 1, 1995 (Petitioner's Exhibit # 1).

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit). No exhibits were submitted by Dr. Ariel R. Mattei.

4. Respondent was served with a Notice of Referral Proceeding and a Statement of Charges by certified mail on March 2, 1995 (Petitioner's Exhibit # 1); [T-7-8]³.

5. The Grand Jury through the United States Attorney in the Southern District of New York filed an indictment (92 Cr. 835) against Respondent and other individuals for various violations of Federal Laws (Petitioner's Exhibit # 8).

6. The indictment charged that Respondent, together with other individuals, "unlawfully, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 812, 841(a)(1), and 841(b)(1)(c) of Title 21, United States Code." It was a part and object of said conspiracy that ARIEL R. MATTEI, the defendant, (Respondent herein) and others would distribute and possess with intent to distribute mixtures and substances containing detectable amounts of (1) hydromorphone (hydromorphinol), a heroin synthetic in a form commonly known as "Dilaudid"; (2) glutethimide; and (3) amobarbital in a form commonly known as "Tuinal", all in violation of federal law (Petitioner's Exhibit # 8).

7. As a result of said indictment, Respondent plead guilty to Conspiracy to Distribute Hydromorphone, Count 1 of the Indictment (Petitioner's Exhibits # 3, # 4 and # 6).

8. As a result of said plea of guilty, Respondent was sentenced, on July 27, 1994. The defendant was not committed to the custody of the United States Bureau of Prisons because of time served. The Court ordered that the defendant shall be on supervised release for a term of Four (4) Years (Petitioner's Exhibits # 3 and # 5).

³ Numbers in brackets refer to transcript page numbers [T-].

9. A condition of supervised release was that Respondent "resign forthwith from the practice of medicine". Respondent was also ordered to serve a home detention term of one (1) year during which time the defendant is to be confined to his home (Petitioner's Exhibits # 3 and # 5).

10. In the July 27, 1994 sentencing statement, Judge Louis L. Stanton indicated that "The realities are that Dr. Mattei is seriously sick, both mentally and physically." (Petitioner's Exhibit # 5).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual allegations listed in the Statement of Charges is SUSTAINED.

The Hearing Committee concludes that the Specification of Charges listed in the Statement of Charges is SUSTAINED.

I Service of Charges and of Notice of Hearing.

P.H.L. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under

oath. After due diligence has been certified, then, the Charges and Notice of Hearing must be served by registered or certified mail to the licensee's last known address, at least fifteen (15) days before the Hearing.

From the affidavits submitted, personal service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was attempted on at least 5 separate occasions at various times during the day and evening. Due diligence was shown and the Notice of Referral Proceeding and the Statement of Charges was mailed to Respondent by certified mail, return receipt requested on March 2, 1995, more than 15 days prior to the scheduled hearing.

In addition, Respondent appeared without objection, on March 21, 1995.

Service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was proper and timely.

II Professional Misconduct under §6530(9)(a)(ii) of the Education Law.

The Hearing Committee concludes that the Department of Health has shown, by a preponderance of the evidence, that Respondent was convicted of committing a crime under Federal Law. Respondent's conviction constitutes professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The record establishes that Respondent was convicted of committing a crime under Federal Law. In essence, Respondent was convicted of intentionally and knowingly conspiring to distributing and possess with the intent to distribute mixtures and substances containing detectable amounts of hydromorphone, a heroine synthetic.

In addition, Respondent's physical and mental competence is in question.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

All other issues raised have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
May, , 1995


HILDA RATNER, M.D., (Chair)

ROBERT J. O'CONNOR, M.D.
MICHAEL A. GONZALEZ, R.P.A.

To: Ariel R. Mattei, M.D.
Respondent
2675 Grand Concourse-Apt. 2G
Bronx, New York 10468

Ralph Bavaro, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional 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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
ARIEL R. MATTEI, M.D. : PROCEEDING

-----X

TO: ARIEL R. MATTEI, M.D.
2675 Grand Concourse - Apt. 2G
Bronx, New York 10486

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 21st day of March, 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, on or before March 11, 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 March 11, 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

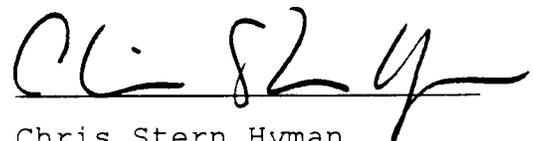
writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement 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: New York, New York

January 24, 1995



Chris Stern Hyman
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Ralph J. Bavaro
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2604

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ARIEL R. MATTEI, M.D. : CHARGES

-----X

ARIEL R, MATTEI, M.D., the Respondent, was authorized to practice medicine in New York State on June 4, 1965, by the issuance of license number 094326 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about January 21, 1994, in U.S. District Court for the Southern District of New York, respondent pled guilty and was accordingly convicted of conspiracy to distribute hydromorphone in violation of 21 U.C.S. 846, a felony offense. On July 27, 1994, Respondent was sentenced to one (1) year home detention plus four (4) years on supervised release. One of the conditions of supervised release was that Respondent "resign forthwith from the practice of medicine".

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. law Section 6530(9)(a) (McKinney Supp. 1995), in that he has been convicted of committing a crime under federal law. Petitioner charges:

1. The facts in Paragraph A.

DATED: *January 24,* 1995
New York, New York


CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct