

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

May 8, 1991

BACHYNSKY
Nicholas ~~Bachysky~~, Physician
7322 Southwest Freeway - Suite 550
Houston, Texas 77074

c/o Dr. Moss
905 Fifth Avenue
New York, N.Y. 10021

#47424-079
Federal Correctional Facility - Fort Worth
3150 Horton Road
Fort Worth, Texas 7619

Re: License No. 168030

Dear Dr. Bachynsky:

Enclosed please find Commissioner's Order No. 11475. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

Gustave Martine

GUSTAVE MARTINE
Supervisor

DJK/GM/er

CERTIFIED MAIL - RRR

cc:

RECEIVED

MAY 15 1991

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

24.7 Review in other cases. The committee on the professions shall review and submit its recommendation to the Board of Regents for final determinations in the following cases:

(b) petitions for restoration of a professional license which has been revoked or surrendered pursuant to Education Law, section 6510 or 6510-a. At least one year shall have elapsed from the date of service of the order of revocation, acceptance of surrender, or denial of a prior application for restoration or reinstatement by vote of the Board of Regents, for the acceptance by the department of a petition to the Board of Regents for restoration of a license or certificate, except that a period of time during which the license was suspended during the dependency of the discipline proceeding may reduce the one-year waiting period. This section shall not apply to restoration of licenses which have been temporarily surrendered pursuant to Education Law, section 6510-b, or Public Health Law, section 230(13).

(1) Materials submitted in response to the Committee on the Professions' recommendation to the Board of Regents shall be filed no later than 15 days following the postmarked date of the written notification of the decision or recommendation of the Committee on the Professions.

(2) If an applicant has failed to remain current with developments in the profession, and a substantial question is presented as to the applicant's current fitness to enter into the active practice of the profession, the Board of Regents may require that the applicant take and obtain satisfactory grades on a proficiency examination satisfactory to the department prior to the issuance of a license or limited permit.

REPORT OF THE
REGENTS REVIEW COMMITTEE

NICHOLAS BACHYNSKY

CALENDAR NO. 11475



The University of the State of New York

IN THE MATTER
of the
Disciplinary Proceeding
against

NICHOLAS BACHYNSKY

No. 11475

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

NICHOLAS BACHYNSKY, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On January 25, 1991, respondent did not appear before us in person or by attorney. Respondent has submitted a written personal statement. Daniel J. Persing, Esq., represented the Department of Health.

Petitioner's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was revocation.

Respondent's recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was that further pain not be inflicted upon him at this moment of extreme anxiety.

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. Respondent was convicted of a federal crime, as set forth in the first specification of the statement of charges and the record herein.
3. After a hearing was held before the Texas State Board of Medical Examiners on November 4, 1989, a final order was issued by the Texas State Board of Medical Examiners on January 26, 1990.
4. The Texas State Board of Medical Examiners found that respondent violated Tex. Rev. Civ. Stat. article 4495(b) §3.08(2) (Vernon 1989) based upon his conviction in the Southern District of Texas, United States District Court, of a crime in the grade of felony. Thereupon, the Texas State Board of Medical Examiners revoked respondent's Texas medical license.
5. Respondent has been found guilty of professional misconduct by a duly authorized disciplinary agency of another state where the conduct upon which the findings were based would, if committed in New York State, constitute professional misconduct under Education Law §6509(5)(a)(ii) as set forth in the second specification of the statement of charges and the record herein.

NICHOLAS BACHYNSKY (11475)

6. Respondent's license to practice medicine was revoked after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state (Texas) where the conduct resulting in the revocation would, if committed in New York State, constitute professional misconduct under New York Education Law §6509(5)(a)(ii), as set forth in the third specification of the statement of charges and the record herein.

DETERMINATION AS TO GUILT

The first, second, and third specifications of the charges, annexed hereto, made a part hereof, and marked as Exhibit "A", have each been proven, by a preponderance of the evidence; and respondent is guilty thereof.

With respect to the second and third specifications, the Texas statute violated by respondent, Tex. Rev. Civ. Stat. article 4495(b) §3.08(2), is sufficiently comparable to the New York analogue of Education Law §6509(5)(a)(ii). In fact, the broader New York analogue is not limited to any grade or degree of crime. Accordingly, for purposes of this proceeding, these two disciplinary statutes are equivalent.

**RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED**

Respondent's license to practice as a physician in the State

NICHOLAS BACHYNSKY (11475)

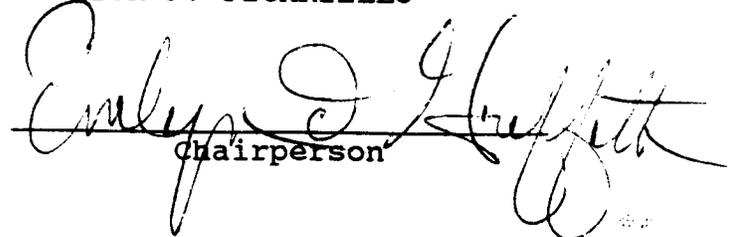
of New York be revoked upon each specification of the charges of which respondent has been found guilty, said revocations to run concurrently.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO


Chairperson

Dated:

4/3/91

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

-----X
IN THE MATTER : STATEMENT
OF : OF
NICHOLAS BACHYNSKY, M.D. : CHARGES
-----X

1. NICHOLAS BACHYNSKY, M.D., the Respondent, was authorized to practice medicine in New York State on October 7, 1986 by the issuance of license number 168030 by the New York State Education Department.

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 from c/o Dr. Moss, 905 Fifth Avenue, New York, New York 10021.

3. The Respondent is charged with professional misconduct within the purview of N.Y. Educ. Law §6509 (McKinney 1985 and Supp. 1990) as set forth in the attached specifications.

FIRST SPECIFICATION

4. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509(5)(a)(ii) (McKinney 1985) in that the Respondent was convicted of a crime under Federal law. Specifically:

On or about July 13, 1989, the Respondent plead guilty to Count 1, Section A and Count 87 in Case Number H-88-00364-01, entitled United States of America v. Nicholas Bachynsky, pending before the United States District Court for the Southern District of Texas. As a result of his guilty plea, the Respondent was sentenced to serve 121 months in Federal prison, followed by 3 years of supervised release and fined a total of \$35,000.

The Respondent plead guilty to Count 1, Section A of the Grand Jury Indictment which alleged that he engaged in a pattern of racketeering activity to defraud numerous health insurance companies by obtaining money by means of false and fraudulent representations. The racketeering scheme involved the establishment by the Respondent of more than twenty clinics throughout the United States, including New York State, to provide weight loss and/or smoking cessation programs. The fee for the program would vary depending on whether the patient had health insurance coverage. These clinics would disguise the services which were provided by using "inventive" diagnoses in

claims submitted to health insurance companies since the insurance companies would not cover the cost of the program if it were correctly identified. In addition, unnecessary tests were performed and billed at inflated costs and, in some instances, health insurance companies were billed for tests which were not performed. The effect of the Respondent's racketeering scheme was to cause health insurance companies to pay money for programs not covered by insurance. The Respondent's guilty plea to Count 1, Section A encompassed sixty-six acts of racketeering.

The Respondent also plead guilty to Count 87 in that he conspired to defraud the Internal Revenue Service by establishing foreign "off-shore" corporations and foreign bank accounts to conceal the Respondent's earned taxable income. The tax fraud conspiracy also involved the formation of a sham foreign insurance company for purposes of claiming fraudulent income tax deductions for insurance premiums paid to the sham insurance company.

SECOND SPECIFICATION

5. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509(5)(b) (McKinney 1985) in that he was found guilty of professional misconduct by a duly

authorized professional disciplinary agency of another state, where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State. Specifically:

On or about January 26, 1990 the Texas State Board of Medical Examiners issued an Order finding the Respondent guilty of violating section 3.08(2) of the Medical Practice Act, Article 4495b of the Texas Revised Civil Statutes.

A violation of section 3.08(2) of the Texas Medical Practice Act is comparable to a violation of N.Y. Educ. Law §6509(5)(a)(ii) (McKinney 1985).

THIRD SPECIFICATION

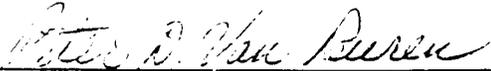
6. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509(5)(d) (McKinney Supp. 1990) in that his license to practice medicine was revoked by a duly authorized professional disciplinary agency of another state, where the conduct which resulted in the license revocation would, if committed in New York State, constitute professional misconduct under the laws of New York State. Specifically:

On or about January 26, 1990 the Texas State Board of Medical Examiners issued an Order revoking the Respondent's

medical license based upon the Respondent's guilty plea to two counts of a Federal felony indictment.

The Texas disciplinary penalty was founded upon Texas Medical Practice Act section 3.08(2) which is comparable to N.Y. Educ. Law §6509(5)(a)(ii) (McKinney 1985).

DATED: Albany, New York
October 5, 1985



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

**ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK**

NICHOLAS BACHYNSKY

CALENDAR NO. 11475



The University of the State of New York

IN THE MATTER

OF

NICHOLAS BACHYNSKY
(Physician)

**DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 11475**

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 11475, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (April 26, 1991): That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of NICHOLAS BACHYNSKY, respondent, be accepted; that respondent is guilty of the first, second, and third specifications of the charges by a preponderance of the evidence; that respondent's license and registration to practice as a physician in the State of New York be revoked upon each specification of the charges of which respondent has been found guilty, said revocations to run concurrently; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of

NICHOLAS BACHYNSKY (11475)

the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 30th day of

April, 1991.

Thomas Sobol

Commissioner of Education

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

-----X
: IN THE MATTER : NOTICE OF
: OF : DIRECT REFERRAL
: NICHOLAS BACHYNSKY, M.D. : PROCEEDING
: -----X

TO: NICHOLAS BACHYNSKY, M.D.
c/o Dr. Moss
905 Fifth Avenue
New York, New York 10021

NICHOLAS BACHYNSKY, M.D.
1110 Pine Circle
Seabrook, Texas 77586

Federal Correctional Facility-Fort Worth
3150 Horton Road
Fort Worth, Texas 76119

Att: Nicholas Bachynsky
#47424-079

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(m)(iv) (McKinney Supp. 1990) and N.Y. State Admin. Proc. Act Sections 301-307 (McKinney Supp. 1990). The proceeding will be conducted before the Regents Review Committee of the Board of Regents on the th day of , 1990 at o'clock in the forenoon of that day at One Park Avenue, 6th Floor, New York, New York 10016.

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 witnesses and evidence on your behalf. However, the Regents Review Committee will permit only such sworn testimony and documentary evidence which relates to the nature and severity of the penalty that may be imposed on you. The Regents Review 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 Regents Review Committee, c/o Division of Legal Services, Office of Professional Discipline, New York State Education Department, One Park Avenue, 6th Floor, New York, New York 10016 as well as the Department of Health attorney indicated below, on or before _____, 1990 .

You may file a written answer or brief. Six copies of all papers you wish to submit must be filed with the Regents Review Committee, at the address indicated for the above on or before _____, 1990 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Regents Review Committee 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 review by the Regents Review Committee shall be based upon the charges, the documentary evidence, brief and/or sworn testimony submitted by the Department of Health, and any documentary evidence, written answer, brief and/or sworn testimony you may wish to submit pursuant to the instructions set forth above.

The Regents Review Committee will submit a written report of its findings, determination as to guilt, and recommendation as to the measure of discipline, if any, to be imposed to the Board of Regents for its determination of this matter.

In lieu of referring this matter to the Board of Regents for its determination, the Regents Review Committee may refer

this matter for further proceedings pursuant to N.Y. Pub. Health Law Section 230(10)(a) (McKinney Supp. 1990).

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

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

Inquiries should be addressed to:
PAUL R. WHITE
Associate Counsel
(518) 473-4282