



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

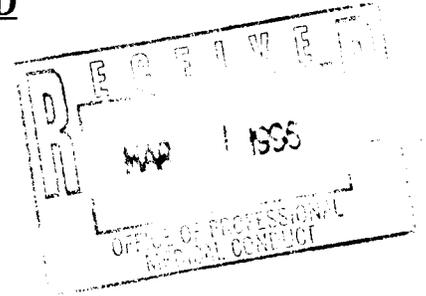
Karen Schimke
Executive Deputy Commissioner

February 29, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Henry L. Huckaby, M.D.
2619 Holman
Houston, Texas 77004

Kim O'Brien, Esq.
New York State Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237



Effective Date March 7, 1996

RE: In the Matter of Henry L. Huckaby, M.D.

Dear Dr. Huckaby and Ms. O'Brien:

Enclosed please find the Determination and Order (No. BPMC-96-37) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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.

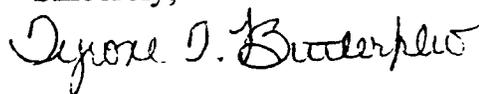
The notice of review served on the Administrative Review Board should be forwarded to:

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
HENRY L. HUCKABY, M.D.

DETERMINATION

AND

ORDER

NO. BPMC-96-37

A Notice of Referral Proceedings and Statement of Charges, both dated January 8, 1996 were served upon the Respondent, **HENRY L. HUCKABY, M.D.** **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 **KIMBERLY A. O'BRIEN, SENIOR ATTORNEY**, 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)(a)(ii), 6530(9)(b) and 6530(9)(d). 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. Henry L. Huckaby, M.D., the Respondent, was authorized to practice medicine in New York State in 1968, by the issuance of license number 102519 by the New York State Education Department (Petitioner's Exhibits 1 and 2).
2. On or about January 29, 1988, the Respondent was convicted in the United States District Court, Southern District of Texas, on multiple counts constituting violations of Title 42, United States Code §1395n.n. (making false claims in Medicare statements) in that, on or about the period of January-May 1984, he knowingly and unlawfully made false Medicare claims. The United States District Court sentenced the Respondent to a six (6) month prison term, five (5) year probation, 500 hours of community service and assessed a \$10,000 fine to be paid at a rate no less than \$200 a month (Petitioner's Exhibit 2).
3. BY ORDER dated October 29, 1988, the Texas State Board of Medical Examiners found the Respondent in violation of Section 3.08(2) of the Medical Practice Act, Article 4495 b, Tex.

Rev. Civ. Stat. Ann.; for being convicted of a crime in the grade of a felony. The Texas Board suspended the Respondent's license to practice medicine in Texas, stayed the suspension, imposed a ten year probation (later reduced to five years), required the Respondent to appear before the Texas Board twice a year (later reduced to once a year), and required fifty hours per year of Continuing Medical Education (Petitioner's Exhibit 3).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

CONVICTED OF A CRIME

Respondent is charged with professional misconduct by reason of his having been convicted of committing an act constituting a crime under federal law, in violation of N.Y. Educ. Law §6530(9)(a)(ii) (McKinney Supp. 1996).

SUSTAINED (Vote 3-0).

SECOND SPECIFICATION

DISCIPLINE IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1996) by reason of his having been disciplined by a duly authorized professional disciplinary agency of another state.

SUSTAINED (Vote 3-0).

THIRD SPECIFICATION

LICENSE TO PRACTICE MEDICINE IN ANOTHER STATE SUSPENDED

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) by reason of having his application to practice medicine suspended by a duly authorized professional disciplinary agency of another state.

SUSTAINED (Vote 3-0).

DETERMINATION OF THE HEARING COMMITTEE

The Respondent was convicted in the United States District Court , Southern District of Texas, of a serious crime arising from a scheme to defraud the Medicare Program. Based on that conviction, he was subsequently disciplined by the Texas State Board of Medical Examiners.

The conduct underlying the Texas Board's finding of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(2) (McKinney Supp. 1996) [practicing fraudulently] and/or N.Y. Educ. Law §6530(20) (McKinney Supp. 1996) [moral unfitness] and/or N.Y. Educ. Law §6530(21) (McKinney Supp. 1996) [willfully making or filing a false report].

The Respondent failed to appear at the present hearing and he did not submit any evidence in mitigation of the charges.

The Respondent's license to practice medicine in the State of New York should be **REVOKED.**

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine 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:



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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
HENRY LAFAYETTE HUCKABY, M.D. : PROCEEDING

-----x

TO: HENRY LAFAYETTE HUCKABY, M.D.
2619 Holman
Houston, Texas 77004

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. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the seventh day of February, 1996 at 10:00 a.m. in the forenoon of that day at the Cultural Education Building, Room E, Concourse, 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 January 29, 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 29, 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
January 8, 1996



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

Inquiries should be addressed to:

Kimberly A. O'Brien
Senior Attorney

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
HENRY LAFAYETTE HUCKABY, M.D. : CHARGES

Respondent :
-----X

HENRY LAFAYETTE HUCKABY, M.D., the Respondent, was authorized to practice medicine in New York State on or about 1968 by the issuance of license number 102519 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. The United States District Court, Southern District of Texas, on or about January 29, 1988, convicted Respondent on multiple counts constituting violations of Title 42, United States Code §1395 (making false claims in Medicare statements) in that, on or about the period of January - May 1994, he knowingly and unlawfully made false Medicare claims. The United States District Court sentenced Respondent to a six (6) month prison term, five(5) year probation, 500 hours of community service and assessed a \$10,000 fine to be paid at a rate no less than \$200 a month.
- B. 1. The Texas State Board of Medical Examiners,

[hereinafter "the Texas Board"], by Texas Board Order on or about October 29, 1988, found Respondent in violation of Section 3.0892 of the Medical Practice Act, for making false Medicare statements, and Article 4495b. Texas. Rev. Civ. Stat. Ann., for being convicted of a felony crime.

2. The Texas Board suspended and stayed Respondent's license to practice medicine in Texas, imposed a ten year probation (later reduced to five years), required Respondent to appear before the Texas Board twice a year (later reduced to once a year), and required fifty hours per year of Continuing Medical Education.
3. The conduct underlying the Texas Board's finding of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(2) (McKinney Supp. 1996) [practicing fraudulently] and/or N.Y. Educ. Law §6530(20) McKinney Supp. 1996) [moral unfitness] and/or N.Y. Educ. Law §6530(21) (McKinney Supp. 1996) [willfully making or filing a false report].

FIRST SPECIFICATION

CONVICTION OF A CRIME

Respondent is charged with professional misconduct by reason of his having been convicted of committing an act constituting a crime under federal law, in violation of N.Y. Educ. Law

§6530(9)(a)(ii) (McKinney Supp. 1996) in that Petitioner charges:

- 1. The facts in paragraphs A.

SECOND SPECIFICATION

DISCIPLINE IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1996) by reason of his having been disciplined by a duly authorized professional disciplinary agency of another state, in that Petitioner charges:

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

THIRD SPECIFICATION

LICENSE TO PRACTICE MEDICINE IN ANOTHER STATE SUSPENDED

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) by reason of having his application to practice medicine suspended by a duly authorized professional disciplinary agency of another state, in that Petitioner charges:

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

DATED: *January 8*, 1996
Albany, New York

Peter D. Van Buren

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