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

April 12, 1990

Henry A. Camperlengo, Physician
558 Park Avenue
Albany, New York 12208

Re: License No. 083263

Dear Dr. Camperlengo:

Enclosed please find Commissioner's Order No. 10439. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case 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.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

Moira A. Doran

MOIRA A. DORAN
Supervisor

DJK/MAH/er
Enclosures

CERTIFIED MAIL- RRR
cc: Dennis Schlenker, Esq.
174 Washington Avenue
Albnay, N.Y. 12210

REPORT OF THE
REGENTS REVIEW COMMITTEE

HENRY A. CAMPERLENGO

CALENDAR NO. 7089

The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

HENRY A. CAMPERLENGO

Nos. 10439/7089
APPLICATION
FOR
RECONSIDERATION

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

REPORT OF THE REGENTS REVIEW COMMITTEE

HENRY A. CAMPERLENGO, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

By a statement of charges dated October 27, 1986, respondent was charged with three specifications of unprofessional conduct. These charges were brought in a direct referral proceeding.

On June 9, 1987, respondent did appear and was represented by an attorney. After carefully reviewing and considering the entire record, we unanimously recommended to the Board of Regents that respondent was guilty of the first and second specifications of the charges to the extent that said specifications involve conduct occurring on or after October 1, 1977 and was not guilty of the third specification of the charges, and that, as the measure of

discipline, respondent be required to perform 100 hours of public service, and respondent's license to practice as a physician in the State of New York be suspended for five years upon each specification of the charges of which respondent has been found guilty, said suspensions to run concurrently and said public service to total 100 hours, and execution of the last four years of said suspensions be stayed at which time respondent be placed on probation for said four years. Our prior report is annexed hereto, made a part hereof, and marked as Exhibit "A".

On December 15, 1987, an order of the Commissioner of Education was issued and thereafter duly served upon respondent. The order was issued pursuant to the November 20, 1987 vote of the Board of Regents accepting our findings of fact, determination as to guilt, and recommendation as to the measure of discipline, except amending the terms of probation. The vote of the Board of Regents and order of the Commissioner of Education are annexed hereto, made a part hereof, and marked as Exhibit "B".

In the Article 78 proceeding commenced by respondent regarding the determination of the Board of Regents, a stipulation was entered into between respondent's attorney and the Attorney General of the State of New York. The stipulation agreed that the Article 78 proceeding be held in abeyance pending reconsideration by the Board of Regents in light of Dragan v. Commissioner of Education, 530 N.Y.S.2d 896 (3rd Dept. 1988), and that pending reconsideration

by the Board of Regents, respondent's license to practice medicine be reinstated. The Appellate Division, Third Department, ordered that the Article 78 proceeding be held in abeyance pending reconsideration by the Board of Regents and that enforcement of the order of the Commissioner of Education be stayed pending such reconsideration.

Pursuant to the Appellate Division order and the stipulation on which it is based, the Executive Director of the Office of Professional Discipline referred this reconsideration for determination under 8 N.Y.C.R.R. §3.3(f). An opportunity was afforded for recommendation by the Commissioner of Health and submissions by respondent and the Department of Health. We have received these responses without any objections from the parties.

The Commissioner of Health recommends adherence to our prior report which essentially agreed with the recommendation as to penalty sought by the Department of Health.

The notice of direct referral proceeding and statement of charges served upon respondent to commence this disciplinary proceeding were based on the prior determination of the New York State Department of Social Services (hereinafter DSS). DSS had determined that respondent engaged in unacceptable practices and, therefore, was disqualified from participating in the Medicaid program and was required to repay overpayments. The Regents Review Committee and the Board of Regents considered, among other things,

whether the three specifications were proven in this direct referral proceeding by the final determination by DSS. The Board of Regents determined that respondent was guilty, by a preponderance of the evidence, to the extent indicated.

This DSS determination can be the subject of a direct referral proceeding. Choi v. State of New York, __N.Y.2d__ (Nov. 30, 1989). The Board of Regents, in a direct referral pursuant to amended Public Health Law §230 (10)(m)(iv), was permitted to equate the findings made by DSS after a hearing regarding respondent's unacceptable practices with violations of Education Law §6509(9) to sustain the charges of professional misconduct. The respondent in Choi unsuccessfully challenged the use of the direct referral procedure to determine his guilt based on the DSS determination. Moreover, the disciplinary action by DSS does not bar the Board of Regents from finding respondent guilty of violating their regulations based on the same activity. The finding may result without relitigating the issues necessarily decided at the hearing by DSS. Abraham v. Ambach, 135 A.D.2d 921 (3rd Dept. 1987). In disciplining a respondent for violating the Regents rules governing the practice of the profession, the Regents may support the charge of unprofessional conduct by respondent with the findings which supported the DSS determination based upon the same activity. Abraham, supra.

Upon this reconsideration, respondent contends that this

direct referral proceeding may not be brought because the adjudication by DSS "absolutely" did not find respondent to have violated the provisions of the Education Law or the rules attendant thereto relating to professional misconduct in the medical profession. We disagree with this argument both under the circumstances herein and generally. The DSS determined that respondent violated, among other regulations, 18 N.Y.C.R.R. §§515.1(a) (prior to August 27, 1979), 515.2(a), 515.2(b)(9), 515.2(b)(11) and 515.2(b)(12). Thus, respondent was determined to have committed unacceptable practices in that respondent's conduct failed to meet standards of good professional medical care and treatment, exhibited an unwillingness to meet such standards or regulations, contravened the policies, standards or procedures of any New York State or Federal statute or regulation, including the State Department of Education, committed an act described as unprofessional conduct as defined by the New York State Board of Regents in its rules, failed to fully disclose the extent of the care, service or supplies furnished, and failed to maintain such records as are required by the Education Law or by the regulation of the Department of Education.

The elements required to prove the first specification were clearly established in the determination by DSS. DSS determined that respondent violated 8 N.Y.C.R.R. §29.2(a)(3) (see page 5 of DSS determination) and, therefore, committed unacceptable

practices under 18 N.Y.C.R.R. §§515.1 and 515.2. In our opinion, these violations of regulations, either separately or in combination, suffice to establish respondent's guilt as to the first specification. For example, respondent's violation of 18 N.Y.C.R.R §515.2(b)(11) is sufficient for finding respondent guilty in a direct referral and we have similarly concluded in the past. See Matter of Stanley Jackson, Calendar No. 6850. Also, respondent's violations of 18 N.Y.C.R.R. §§515.1(a), 515.2(a), 515.2(b)(9), and/or 515.2(b)(12) are also sufficient for this purpose.

Furthermore, respondent acknowledges that DSS determined that he failed to comply with the record keeping requirements for Medicaid patients and failed to provide adequate documentation of Medicaid patient treatment. The DSS Administrative Law Judge wrote in regard to respondent:

> In exhibiting a blatant disregard for the Department's legitimate record keeping requirements, he has committed the unacceptable practices quoted above, <u>including the commission of unprofessional conduct in the practice of medicine</u>, by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

DSS determination page 14 (Emphasis Added). Therefore, respondent's broadside argument that there was "absolutely" no finding of a violation of the Education Law or attendant rules is without merit.

With respect to the second specification of the charges,

concerning 8 N.Y.C.R.R. §29.1(b)(1) in regard to the issue of a willful violation, respondent's record keeping violations, determined by the DSS, rose to the level of willfulness. We find that respondent "exhibited an unwillingness" to meet the standards contained in 8 N.Y.C.R.R. §29.2(a)(3). 18 N.Y.C.R.R. §515.1(a). Respondent's record keeping violations were knowing, intentional, or deliberate. Brestin v. Commissioner of Education of State of New York, 116 A.D.2d 357 (3rd Dept. 1986). DSS determined that respondent "deliberately put meaningless information on his billing forms." DSS decision page 13 (Emphasis Added). His repeated disregard of recordkeeping requirements constitute a willful violation of law.

The Appellate Division, Third Department, reviewed the DSS record and held that respondent's permanent disqualification from participating as a provider in the Medicaid program and recoupment of overpayment were authorized by the DSS regulations and respondent's own testimony. Camperlengo v. Perales, 120 A.D.2d 883 (1986). Respondent admitted the uniform diagnosis he listed on the Medicaid billing form was provided because he "didn't think it was anybody's business what their real diagnosis was". The Court commented that respondent's own testimony before DSS "evinced disdain for the record keeping rule." Respondent also admitted at the hearing that he did not keep "progress notes" of his patient visits after the first visit because "he does not feel that it is

necessary to do so." DSS determination page 9.

Based on respondent's testimony, DSS believed that respondent would not have complied with the record keeping requirements "even if he had been specifically advised that they existed. Id. DSS referred to respondent's practices as "arrogant", "complete", and "blatant". The ALJ wrote that it is "obvious beyond doubt that the appellant either kept no records of his patient visits, or that he is still concealing their existence." Id. at 8.

In our opinion, the DSS determination demonstrates the elements required to prove the misconduct charged pursuant to Education Law §6509(9) and 8 N.Y.C.R.R. §29.1(b)(1) under the second specification. Dragan v. Commissioner of Education, supra.

Although it is our opinion that the elements of the first and second specifications were established, it is also our opinion that the elements of filing a false report were not proven. Inasmuch as the DSS determination was based upon respondent's willful record keeping violations, as distinguished from filing a false report, we continue to recommend that respondent be found not guilty of the third specification.

In view of the foregoing, we unanimously recommend that the Board of Regents deny this application for reconsideration of its prior determination herein and, as recommended by the Commissioner

of Health, there be adherence to the prior determination of the Board of Regents.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO

Emlyn I. Griffith

Chairperson

Dated: 3/3/90

The University of the State of New York

IN THE MATTER

OF

HENRY A. CAMPERLENGO
(Physician)

DUPLICATE ORIGINAL VOTE AND ORDER NOS. 10439/7089

Upon the application of HENRY A. CAMPERLENGO, for reconsideration of the determination of the Board of Regents pursuant to the Rules of the Board of Regents, under Calendar Nos. 10439/7089, the report of the Regents Review Committee, a copy of which is made a part hereof, and in accordance with the provisions of Title VIII of the Education Law, it was

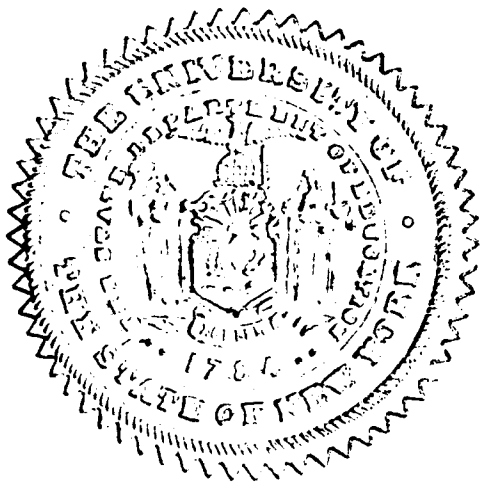
VOTED (March 23, 1990): That the report and recommendation of the Regents Review Committee be accepted; that the application of HENRY A. CAMPERLENGO, for reconsideration be denied and, as recommended by the Commissioner of Health, the prior determination of the Board of Regents be adhered to; and that 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 the personal service of this order upon the respondent or five days after mailing by certified mail.

HENRY A. CAMPERLENGO (10439/7089)



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 6th day of April, 1990.

Thomas Sobol

Commissioner of Education

REPORT OF THE
RECENT REVIEW COMMITTEE

HENRY A. CAMPERLENGO

CALENDAR NOS. 10439/7089

The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

HENRY A. CAMPERLENGO No. 7089

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

Report of the Regents Review Committee

HENRY A. CAMPERLENGO, 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 June 9, 1987 respondent did appear and was represented by his attorney, Dennis Schlenker, Esq. E. Marta Sachey, Esq., represented the Office of Professional Medical Conduct of the New York State Department of Health.

We have carefully reviewed and considered the entire record in this matter.

The statement of charges contains three specifications according to the heading on page two therein. At the same time, the statement of charges refers to four separate findings on which this proceeding is based. A question

arises as to how these four findings fit into the three specifications. Nevertheless, we believe that it is apparent that each specification of the charges relates to one of the three specified sections of part 29 of the Rules of the Board of Regents defining unprofessional conduct rather than to any combination of these sections. We suggest that, in the future, any possible confusion be avoided by having the statement of charges separately state and number each specification of the charges.

The issue presented is whether any of the specifications of the charges has been proven by the final determination of the New York State Department of Social Services. In this direct referral proceeding, this Regents Review Committee must issue a report of findings, determination as to guilt, and recommendation as to the measure of discipline to be imposed. Public Health Law §230(10)(m)(iv).

We render the following findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed.

FINDINGS OF FACT

1. We find that respondent was licensed to practice as a physician in the State of New York by the New York State Education Department.

2. We find that on November 14, 1984 the New York State Department of Social Services determined, in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "A", that its prior September 6, 1983 determinations to disqualify respondent permanently from participation in the medicaid program and to recover overpayments were correct, except for the method of computing the amount of the overpayment.

3. The finding of violations of state law, rules or regulations pursuant to the final determination of the New York State Department of Social Services was made by an agency having the power to conduct the proceeding and after an adjudicatory proceeding has been conducted.

4. No appeal was pending at the time this proceeding was commenced as the Appellate Division of the Supreme Court, Third Department, at 120 AD2d 883, confirmed the determination of the New York State Department of Social Services, and the New York Court of Appeals, at 68 NY2d 606, denied a motion for leave to appeal.

5. We find that respondent failed to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (first

specification) and wilfully failed to comply with substantial provisions of Federal, state or local laws, rules or regulations governing the practice of the profession (second specification), and did not wilfully make or file a false report (third specification).

DETERMINATION AS TO GUILT

We unanimously determine that the first and second specifications of the charges, as set forth in the statement of charges annexed hereto, made a part hereof, and marked as Exhibit "B", have been proven by a preponderance of the evidence and that respondent is guilty of the same to the extent that said specifications involve conduct occurring on or after October 1, 1977, the effective date of the current provisions of the unprofessional conduct Rules of the Board of Regents. We also unanimously determine that the third specification of the charges, as set forth in the statement of charges annexed hereto, made a part hereof, and marked as Exhibit "B" has not been proven by a preponderance of the evidence and that respondent is not guilty of the same.

In arriving at our determination as to guilt for each specification of the charges, we reviewed the record in accordance with the standard of a preponderance of the evidence. Contrary to respondent's contentions, guilt is

not predetermined by the Board of Regents and is not evaluated on a unilateral basis without any contribution from respondent. In this case, guilt is based upon the record which includes the proof received from both parties.

The final determination of the New York State Department of Social Services, petitioner's Exhibit 3, establishes respondent's guilt only in regard to the first and second specifications of the charges. The New York State Department of Social Services determined, in part:

> In exhibiting a blatant disregard for the Department's legitimate record keeping requirements, he has committed the unacceptable practices quoted above, including the commission of unprofessional conduct in the practice of medicine, by 'failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient'.

Page 14 of November 14, 1984 determination of New York State Department of Social Services.

It is our unanimous opinion that the violation referred to in the first specification of the charges was determined by the New York State Department of Social Services to be willful in view of the "arrogant", "complete", and "blatant" disregard demonstrated by respondent's choosing that it was not necessary for him to maintain the required records. Id. pages 9 and 14.

It is also our unanimous opinion that while the New York State Department of Social Services considered the

veracity of respondent and his reports, it did not determine that the respondent willfully made or filed a false report as it was not in issue in that proceeding.

RECOMMENDATION AS TO THE PENALTY TO BE IMPOSED

We unanimously recommend to the Board of Regents that respondent be required to perform 100 hours of public service and that respondent's license to practice as a physician in the State of New York be suspended for five years upon each specification of the charges of which respondent has been found guilty, said suspensions to run concurrently and said public service to total 100 hours, and that execution of the last four years of said suspensions be stayed at which time respondent be placed on probation for said four years under the terms set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "C", said probation to provide for said public service.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO

Emlyn I. Griffith
Chairperson

Dated: 10/27/87

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

HENRY CAMPERLENGO, M.D.

from a charge of alleged unacceptable practices in the Medical Assistance Program.

Before: Stephen Fry
Administrative Law Judge

Held At: New York State Department
of Social Services
99 Washington Avenue
Albany, New York
December 19, 1983 and
December 27, 1983

Appearances: Joseph Nitsche, Esq.
New York State Department
of Social Services
40 North Pearl Street
Albany, New York 12243

Feit and Schlenker, Esqs.
174 Washington Avenue
Albany, New York
By: Dennis Schlenker, Esq.

HENRY CAMPERLENGO, M.D.

The appellant, Henry Camperlengo, M.D., requested this hearing pursuant to Sections 515.8 and 515.9 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (hereinafter called "the Regulations"), to appeal from a determination of the New York State Department of Social Services (hereinafter called "the Department"), to disqualify him permanently from participation in the Medical Assistance Program (hereinafter called "the Medicaid Program"), with statewide effect, and to disallow payments made to him by the program in the amount of $62,385.00. The parties appeared and were represented by counsel. The hearing having been held, it is hereby found:

(1) The appellant is a duly licensed psychiatrist and a provider of medical services under the Medicaid Program.

(2) The Department is the State agency authorized to supervise the administration of the Medicaid Program.

(3) On September 6, 1983, the Department notified the appellant by letter that, pursuant to an audit, it had determined to disqualify him permanently from participation in the Medicaid Program, with statewide effect, because he had engaged in unacceptable practices as defined in the Regulations, and to disallow payments made to him totalling $62, 385.00, made during the audit period (January, 1977 - November 13, 1980). These determinations were predicated upon a finding that the appellant had failed to adequately document visits with Medicaid patients.

(4) The Department proposes to recover from the appellant the alleged overpayments of $62,385.00 plus interest of $13,692.26, for a total of $76,077.26, less any reimbursement made by the Medicaid recipient, Michael Minihan, for care provided him.

Pursuant to Section 363-a of the Social Services Law, the Department is charged with the duty to protect the integrity of the Medicaid Program. In furtherance of this obligation, Section 515.3 of the Regulations provides that when a provider is determined to have engaged in unacceptable practices, as defined in Section 515.3,

the Commissioner or the Commissioner's designee may impose sanctions upon the provider.

Prior to August 27, 1979, the term, "unacceptable practice", was defined in 18 NYCRR 515.1(a) as follows:

> "Conduct which fails to meet standards of good professional medical care and treatment, hampers effective administration of the medical assistance program, disregards established policies, standards, fees and procedures, increases costs to the program without providing equivalent increases in benefits to the program or client, is inconsistent with program standards or regulations, exhibits an unwillingness to meet such standards or regulations, is a potential threat to public health or safety, constitutes fraud or otherwise compromises the purposes of the medical assistance program."

As of August 29, 1979, the definition was renumbered to 515.2 and amended to read, in pertinent part, as follows:

> "(a) An unacceptable practice is conduct by a provider which contravenes the policies, standards or procedures of any New York State or Federal statute or regulation, including the official policies, standards, fee codes and procedures of the Department, the State Department of Health, Mental Hygiene or Education, as set forth or issued under the authority of statute or regulation, affecting or directed at maintenance of a high standard of care, services and supplies, or maintenance of the fiscal integrity of the medical assistance program.
>
> (b) An unacceptable practice is conduct which includes, but is not limited to, the following:...
>
> (9) committing any act described as unprofessional conduct, as defined by the New York State Board of Regents in its rules or by regulations of the New York State Commissioner of Education, or engaging in any act determined by the Board of Regents to be professional misconduct;...
>
> (11) failing to maintain such records as are necessary to fully disclose the extent of the care, service or supplies furnished;
>
> (12) failing to maintain such records as are required by the Social Services Law, Public Health Law, Mental Hygiene Law and Education Law, or by the regulations of the State Department of Social Services, Health, Mental Hygiene and Education."

HENRY CAMPERLENGO, M.D.

Section 515.3(a) of the Regulations provides that upon a determination that a provider has been or is engaged in an unacceptable practice as set forth in Section 515.2 of this part, the Commissioner or the Commissioner's designee may impose one or more sanctions, including permanent disqualification from participation in the Medical Assistance Program with statewide effect. Sections 515.4(a)(6) of the Regulations, entitled "Guidelines for Disposition of Sanctions", provides that permanent disqualification may be imposed upon a determination that the provider either:

> "has failed to prepare, maintain or make available records sufficient to enable the Commissioner or Commissioner's designee to determine whether the provider has complied with the requirements of law, statute, regulation, contract or agreement."

The duty of physicians participating in the Medicaid Program to maintain records is set forth in Section 22.12 of the State Medical Handbook as follows:

"PROVIDER RECORDS

Social Security Act provisions applicable in the medical assistance program are concerned with requirements for providers in a State Medical Assistance program to 'keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State (Title XIX) plan' and 'to furnish the state agency with such information regarding any payments claimed by such person or institution for providing services under the State plan, as the state agency may from time to time request.' (Social Security Act Section 1902, (9), (27)).

* * *

It is therefore a basic requirement for Medicaid program participation that providers of care and services maintain proper records.

* * *

For professional practitioners who are providing diagnostic and/or treatment services to medicaid enrollees, it is expected that records will be kept of each such individual serviced by the practitioner. The minimal content of such individual patient records should include patient identification, (e.g., name, age, sex, etc.) conditions or reason for which professional care is provided, nature and content of services provided by the practitioner, type of service ordered or recommended for the individual to be provided by another practitioner or facility and dates of all services provided and/or ordered.

> Since maintenance of proper records and furnishing of information relative to care included on a medicaid claim must be considered basic conditions for program participation, failure to conform to such conditions will affect not only payment for any particular care under inquiry or review, but will jeopardize the provider's eligibility to continue as a medicaid program participant."

When a provider bills for his services, he must certify, pursuant to Section 540.7(a)(8) of the Regulations that:

> "...Such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State medicaid program will be kept...and information will be furnished regarding any payment claimed therefor as the local social services agency or the State Department of Social Services may request..."

Pursuant to 8 NYCRR 29.2(a)(3) (the Rules of the Board of Regents), unprofessional conduct in the practice of medicine is defined as, among other things, the following:

> "failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

The nature of the records required under the Medicaid Program is more clearly seen by reference to Item 41.3(2) of the State Medical Handbook, which governed provision of medical services and payment therefor under the Medicaid Program during the audit period in this case. This section specified that:

> "Payment to a physician is based on provision by him of a personal and identifiable service to the medical assistance patient (this is in line with principles applicable in the federal Medicare Program). Further guidelines on 'personal and identifiable service' are included in paragraph 71.8 (Item 71, pages 6 and 7). These guidelines, where appropriate, are applicable to both inpatient and outpatient services."

When the guidelines referred to in this section are applied to the treatment of outpatients, it becomes clear that the following types of actions by a physician constitute "personal and identifiable services":

(1) taking of a patient's history and personally examining the patient;

(2) making a diagnosis;

(3) determining the course of treatment to be followed.

A physician providing services under the Medical Assistance Program must, therefore, document the provision of such services in order to be entitled to payment, and if such documentation is not provided, the Department is entitled to withhold payment or require restitution.

To summarize the evidence adduced at the hearing and discussed further below, it is found that the appellant's records did not meet these standards. These records provided no evidence that the appellant provided any "personal and identifiable services".

The Department, in this case, initially contacted the appellant in August or early September of 1980, after a determination was made to audit his billings for psychiatric services. The Department's auditors prepared a list of the 35 Albany County Medicaid patients treated by the appellant during the audit period (January, 1977 - November 13, 1980), as ascertained by reference to a computer printout prepared by the Albany County Department of Social Services (Department's Exhibit 1), but were unable to obtain any records from the appellant other than his ledger cards. These cards included only patient identifying information, billing dates and abbreviations (O = office, H = hospital) indicating where the patients had allegedly been seen. The appellant refused to turn over to the Department, however, his records of patient visits (which were allegedly kept on yellow legal paper), because he felt that they were privileged and/or confidential information. Soon thereafter, a subpoena was served on the appellant by the Department, which required him to produce these records for audit. The appellant then commenced a lawsuit challenging the Department's right to review his patient records. This lawsuit culminated in a decision, on June 10, 1982, of the New York State Court of Appeals (Camperlengo v Blum, 56 N.Y. 2d 251), which upheld the Department's right to subpoena the appellant's patient records. After the court decision, the appellant supplied the

Department with some records (other than the ledger cards) for some of the patients, consisting of miscellaneous letters, government forms and other documents which, although containing some information about the patients, did not contain notes relating to each of the visits the patients made to the appellant. Furthermore, there were fourteen patients for whom the appellant supplied no other records at all.

The Department also audited the records of the Albany Medical Center Hospital to ascertain what documentation there was of the appellant's visits to his patients who were inpatients there. The Department disallowed payment for all of the office visits for which the appellant had previously received reimbursement, since there was no acceptable documentation of the visits, and it disallowed all hospital visits for which there were no hospital records. (It accepted any documentation, such as nurses' notes, which indicated that the appellant had seen his patients on any given date.) The disallowances are listed individually in the auditors' work papers (Department's Exhibit 4), and summarized in the "Notification of Intent to Take Administrative Action" sent to the appellant on September 6, 1983.

The appellant contended at the hearing that his failure to produce the records he kept on the yellow legal pads was occasioned by their having been rendered useless because of water damage caused by his upstairs tenant having left the water running in his sink over a weekend. This testimony was not credible. This man-made flood occurred, according to the insurance claim filed by the appellant (Hearing Officer's Exhibit 2) in February, 1978, but the claim makes no mention of damage to any of the appellant's records. Furthermore, the appellant testified (transcript pp. 218-220), that at the first visit of each patient, he would, on the yellow legal pads, make notes of the patient's psychiatric longitudinal history (including a chief complaint, present illness, past history and review of systems), results of a mental status examination, his diagnosis, any medications prescribed, any outstanding features

the patient exhibited (such as suicidal or homicidal intent), and a comprehensive prognosis. He would allegedly also, at subsequent visits, list any other pertinent information (i.e., any changes in the diagnosis or inferences drawn from the mental status examination, drug allergies, predispositions to certain physical conditions, lab tests, etc.). Accordingly, it would be expected that the appellant, were he testifying credibly at the hearing, would have had extensive notes for all patients who visited him for the first time after the flood (after February, 1978), and that he would have had at least some notes for all of his other patients. In fact, there were 14 patients out of the 35 he treated, whose first visits were after February, 1978, but there were no notes of visits for any of these or any of the other patients.* In addition, at the time the records were allegedly discarded (they were allegedly stored in his basement until fire or building inspectors ordered them removed from the premises), in October of 1982 (see transcript p. 323), the appellant had been in litigation with the Department over these very records for two years. It is incredible that the appellant would pursue a court case all the way to the Court of Appeals over a two year period (at some considerable expense), to defend his right not to turn over to the Department records which did not exist in a useable form. There is no evidence, in fact, that he even told the auditors about the alleged damage to the records prior to the hearing.

It is obvious beyond doubt that the appellant either kept no records of his patient visits, or that he is still concealing their existence despite all that has

*These 14 patients, and the dates of their visits, are listed in Appendix A, attached. It is also noted that the appellant made insurance claims for damage from a later "flood" on August 23, 1978, caused by a broken pipe, but he specifically testified at the hearing that it was the flood caused by his tenant leaving the sink running which had ruined his records (see transcript pp. 233-234). In any event, of the 14 cases noted in the appendix, 9 of them were patients who were first treated after the second "flood", and extensive records of their first visits would have been expected.

transpired in this case. The latter possibility seems quite plausible, in light of the arrogant disregard the appellant has demonstrated for the right of the Department to monitor his performance and the proper expenditure of public funds. He testified at the hearing, for example, that he listed "anxiety depressional state" as the diagnosis for all of his billings, for all of his patients, because "I didn't think it was anybody's business what their diagnosis was". (transcript pp. 271-272). This testimony is borne out by the computer printout of all of the appellant's billings (Department's Exhibit 1). This is certainly not the attitude of a person who is trying to cooperate with the Department's efforts, and hardly inspires confidence in the veracity of the appellant's testimony as to the fate of his records.

The appellant did admit at the hearing that he does not keep "progress notes" of his patient visits (notes of what transpires at each session), after the first visit because he does not feel that it is necessary to do so. This testimony evinces a complete disregard for the certification signed by the appellant each time he filled out an "EDP-6" form with the Albany County Department of Social Services to bill for his services (Hearing Officer's Exhibit 1). This certification read, in pertinent part, as follows:

> "I hereby certify... that such records as are necessary to disclose fully the extent of care, services and supplies furnished to individuals under the New York State Medicaid Program will be kept..."

The appellant argued that his ledger cards and other similar billing and attendance records were sufficient to "disclose fully the extent of care, services and supplies furnished", despite the absence of medical treatment records. In fact, nothing whatever was disclosed concerning the type, extent and quality of medical care provided. The appellant has prevented the Medicaid Program from being able to verify that he has provided "high quality medical care" (one of the objects of

the Medicaid Program, as noted in Section 363 of the Social Services Law), or from ever being able to verify that he has even provided the care he billed for at all. The mere noting of a date on a billing card with an "O" or an "H" next to it clearly does not constitute full disclosure of the extent of care provided.

The failure of the appellant to keep notes of client visits constituted a danger to his patients. For example, it would appear from the record that the appellant did not keep notes on medications he prescribed. As a result, there were a number of instances at the hearing where the appellant was unable to state, with certainty, whether he had prescribed medications for a patient, or what the medications were (see transcript pp. 239, 256-257, 269, 271)*. The lack of medication records would make it difficult for other medical personnel to ascertain what medications the patients had in their systems in an emergency.

The appellant's argument that medication records are available at the pharmacies these patients used is utterly unconvincing. He does not know what drug stores his patients used anymore than the Department's auditors do, and neither they nor other medical personnel in an emergency should have to search through the County's billing records to find this information and then attempt to retrieve prescription information from the pharmacies. This would not be feasible at night, on weekends or holidays. It is for this very reason that medications, their doses and administration schedules should be listed in patients' files.

The appellant's basic position at the hearing was that the Department should take his word that he treated all the patients on the dates for which he billed the

*It should also be noted that there were a number of patients about whom the appellant was unable to recall much of anything, and for whom he had no records (see transcript pp. 235-236, 246, 262, 268, 271). He would be able to provide no information about these patients to other practitioners who had need to care for them and, of course, could not document for the Medicaid Program what services he had performed.

Medicaid Program and that he provided a high quality of care. This contention is meritless. The Department has a right to insist, and it does, that providers document what services they have provided. If the appellant did not intend to do this, he should never have treated Medicaid patients and should not have falsely signed the certifications on the billing forms that he would do so.

The Department is not required, as contended by the appellant, to accept his verbal assurances, to interview patients to try to reconstruct his treatments, or to try to piece together his diagnoses and treatments from other records, such as hospital or pharmacy records.

It is noted that much of the testimony of the Department's psychiatric expert, as to specific items which allegedly were required during this period to be in a psychiatrist's charts, can be given little weight, since they were not incorporated in the Department's regulations, since there is no evidence whatever, other than her testimony, that they were universally accepted standards, and since the appellant denied that this was the case. However, this is of little import, since the issue at the hearing was not whether the appellant's records met these specific standards, but whether he had <u>any</u> documentation of his visits. It is also noted that the Department currently has specific record keeping requirements for psychiatrists (contained in the Medicaid Management Information System Manual), and that there are specific regulatory standards for psychiatrists practicing in other settings (see, for example, 10 NYCRR 85.29, dealing with outpatient psychiatric services). However, the MMIS Manual provisions are inapplicable because the MMIS system was not in effect in Albany County when the billings were made, and the Health Department regulations are inapplicable because the appellant was not providing outpatient psychiatric services.

The appellant made a number of other specific arguments at the hearing which are disposed of as follows:

(1) That he was ignorant of the Department's record keeping requirements - It is generally recognized that ignorance of the law is not a valid defense. However, even were it appropriate to consider this argument, it cannot be applied to the appellant's circumstances. Firstly, he signed innumerable certifications on his billing forms which specifically stated what the requirements were. Secondly, he admitted at the hearing that he was aware that the Medicare Program had record keeping requirements, and it would certainly not be reasonable to assume that Medicaid, a similar governmental program, did not. Thirdly, it is not reasonable for a practitioner to take no steps to ascertain what the rules are for governmental or insurance programs which are providing him with payment. It would also appear from the appellant's testimony at the hearing, that he would not have complied with the Department's record keep requirements, even if he had been specifically advised that they existed. When informed of the Medicare Program's requirement that he keep daily notes, he commenced using the note, "ISQ" ("in status quo." See transcript p. 227). This note is almost meaningless and tells nothing about what transpired at each visit. This type of note would be utterly unacceptable in the Medicaid Program, and it is certainly unlikely that it is acceptable to the Medicare Program either. His testimony that he did this even though the entries "...are not relevant and I put them on the chart and they fill it up because some bureaucrat wants them there...[t]hey are not there for any reason...", evinces his complete failure to comprehend the basic reasons for the existence of the record keeping requirements as discussed above (transcript p. 227).

(2) That it is not good for the psychiatrist's "therapeutic milieu" to take notes during sessions - This assertion, even if true, is irrelevant, since there is no requirement that the doctor take notes during sessions. He could easily have made notes in his charts after each visit or, as suggested by the Department's psychiatric consultant, at the end of each day.

(3) That the Department did not show that the services he provided were unnecessary or that his diagnoses were incorrect - This argument is utterly preposterous, in light of the fact that the appellant did not credibly demonstrate that he kept any records which could have been used to check the quality of his patient care or the accuracy of his diagnoses. In fact, as noted above, the appellant deliberately put meaningless information on his billing forms as to what his diagnoses were.

(4) That the Department was conducting an "ex post facto" peer review, applying state standards to what was, during the period the services were provided, an autonomous county administered program - This argument is somewhat nebulous (see transcript pp. 170-171), and is invalid. The program administered by the Albany County Department of Social Services during the period was not an autonomous program, but was the New York State Medicaid Program, and the standards applicable to it were promulgated by the Legislature (Social Services Law Section 360, et seq.), and the New York State Department of Social Services (see 18 NYCRR 360 and 500, et seq.). The certification the appellant signed on his billing forms was mandated by the New York State Department of Social Services and by Federal law. The fact that Albany County paid his bills at the time, without questioning them, is irrelevant. The County could not possibly review all Medicaid providers' records prior to payment, and the Department has implicit authority to audit its providers after the fact to ensure compliance with its requirements.

It must be noted, in conclusion, that participation in the Medicaid Program is contractual, and the Department certainly has a right to terminate that relationship when a provider does not fulfill his obligations under that contract. As stated by the New York State Court of Appeals in the case of Schaubman v Blum (49 N.Y. 2d 375, 426 N.Y.S. 2d 230(1980)):

> "...a provider of Medicaid Services has no vested right to continue participation in the program; rather, such participation is a privelege which may, in proper circumstances, be revoked. (See Schwartzberg v Whalen, 66 A.D. 2d 118)."

The circumstances demonstrated in this case are certainly ones which justify the appellant's removal from the roll of authorized providers. In exhibiting a blatent disregard for the Department's legitimate record keeping requirements, he has committed the unacceptable practices quoted above, including the commission of unprofessional conduct in the practice of medicine, by "failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient". The Department's determination to disqualify him permanently from participation in the Medicaid Program was correct, as was the determination to recover the funds paid to him for the visits for which he was unable to document adequately that he provided any services to the recipients.

However, there was representation made by the appellant at the hearing that one patient, Michael Minihan, had repaid the County for all funds expended on his behalf, out of the proceeds of an accident settlement. The Department is directed to make appropriate inquiry into the validity of this assertion, and to subtract from the total of authorized disallowances any sums repaid to Albany County for the care given by the appellant.

DECISION: The determinations of the New York State Department of Social Services to disqualify the appellant permanently from participation in the Medicaid Program and to recover overpayments totalling $62,385.00 plus interest of $13,692.26, for a total of $76,077.26, were correct. The Department is directed, however, to subtract from the amount disallowed any reimbursement made by the patient, Michael Minihan, to the Medicaid Program for the cost

of his care. The appellant's disqualification is to be effective the sixth day after the date of this decision. No Medicaid reimbursement will be available for services provided by the appellant on or after such date.

This decision is made by Stephen Fry, Special Hearings Bureau, who has been designated by the Commissioner of the New York State Department of Social Services to make such decisions.

DATED: Albany, New York

NOV 14 1984

Stephen Fry
Special Hearings Bureau

NEW YORK STATE : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

HENRY A. CAMPERLENGO, M.D.

STATEMENT

OF

CHARGES

The State Board for Professional Medical Conduct, upon information and belief, charges and alleges as follows:

1. HENRY A. CAMPERLENGO, M.D., hereinafter referred to as the Respondent, was authorized to engage in the practice of medicine in the State of New York on September 29, 1959 by the issuance of License Number 083263 by the State Education Department.

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1986 through December 31, 1988 from 69 South Allen Street, Albany, New York 12208.

3. Respondent herein is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509 (McKinney 1985 and Supp. 1986) as set forth in the Specifications attached.

EXHIBIT "B"

FIRST THROUGH THIRD SPECIFICATIONS

4. The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and N.Y. Admin. Code, tit. 8, §29.2(a)(3) (1981), §29.1(b)(1) (1984), and §29.1(b)(6)(1984) by reason of his failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, by reason of his willful or grossly negligent failure to comply with substantial provisions of Federal, State or local laws, rules or regulations governing the practice of the profession, and by reason of his willfully making or filing a false report in that:

The New York State Department of Social Services, by determination dated November 14, 1984, (aff'd Matter of Camperlengo v. Perales, ___ A.D.2d ___(3rd Dep't. 1986), mot. for lv. to appeal denied, ___ N.Y.2d ___(1986), determined that Respondent engaged in unacceptable practices as defined in its regulations (18 NYCRR §515.1(a); 18 NYCRR §515.2) and permanently disqualified Respondent from participation in the Medicaid Program and required Respondent to repay overpayments plus interest totaling approximately $75,000.00.

Specifically, the New York State Department of Social Services, as evidenced in its determination of November 14, 1984, found, inter alia, with regard to thirty-five Medicaid patients provided services by Respondent from January, 1977 through November 13, 1980 that:

(i) Respondent failed to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient;

(ii) Respondent evidenced a complete disregard for the certification, signed by him each time he billed for his services, which read, in relevant part, that "I hereby certify... that such records as are necessary to disclose fully the extent of care, services and supplies furnished to individuals under the New York State Medicaid Program will be kept...";

(iii) Respondent listed "anxiety depressional state" as the diagnosis for all of his billings for all of his patients because he "didn't think it was anybody's business what their diagnosis was."; and

(iv) Respondent did not keep progress notes of his patients visits (notes of what transpires at each session) after the first visit because he does not feel that it is necessary to do so.

DATED: Albany, New York
Oct. 27, 1986.

KATHLEEN M. TANNER
Director
Office of Professional Medical
Conduct

EXHIBIT "C"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

HENRY A. CAMPERLENGO

CALENDAR NO. 7089

1. That respondent shall be subject to the requirement that respondent make semi-annual visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless respondent is not practicing in the State of New York in which case said employee may make other arrangements for the submission of written proof, for the purpose of determining whether respondent has successfully performed 100 hours of public service, to be selected by respondent and previously approved, in writing, by said employee, which shall be performed no later than the first year of the period of probation and respondent must perform said public service in order to be in compliance with this term of probation; and

2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding.

Approved November 20, 1987

No. 7089

Upon the report of the Regents Review Committee, the record herein, under Calendar No. 7089, and in accordance with the provisions of Title VIII of the Education Law, it was

Voted: 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 HENRY A. CAMPERLENGO, respondent, be accepted subject that the terms of probation be amended by adding the following additional term which shall be deemed term numbered 2 of the terms of probation in place of present term numbered 2 which, in turn, shall be deemed term numbered 3:

2. That respondent shall be subject to a random selection of his office, patient, and hospital records by an employee of and selected by the Office of Professional Medical Conduct of the New York State Health Department;

that respondent is guilty of the first and second specifications, to the extent indicated by the Regents Review Committee, by a preponderance of the evidence and not guilty of the third specification; that respondent's license and registration to practice as a physician in the State of New York be suspended for five years and respondent be required to perform 100 hours of public service upon each specification of the charges of which respondent has been found guilty, said suspensions to run concurrently and said public service to total 100 hours; that execution of the last four years of said suspensions be stayed at which time respondent be placed on probation for said four years

HENRY A. CAMPERLENGO (7089)

under the terms prescribed by the Regents Review Committee as amended as indicated above; 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.

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

HENRY A. CAMPERLENGO

CALENDAR NOS. 10439/7089

The University of the State of New York

IN THE MATTER

OF

HENRY A. CAMPERLENGO
(Physician)

DUPLICATE
ORIGINAL ORDER
NO. 7089

Upon the report of the Regents Review Committee, under Calendar No. 7089, the record herein, the vote of the Board of Regents on November 20, 1987, and in accordance with the provisions of Title VIII of the Education Law, which report and vote are incorporated herein and made a part hereof, it is

ORDERED 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 HENRY A. CAMPERLENGO, respondent, be accepted except that the terms of probation be amended by adding the following additional term which shall be deemed term numbered 2 of the terms of probation in place of present term numbered 2 which, in turn, shall be deemed term numbered 3:

2. That respondent shall be subject to a random selection of his office, patient, and hospital records by an employee of and selected by the Office of Professional Medical Conduct of the New York State Health Department;

that respondent is guilty of the first and second specifications, to the extent indicated by the Regents Review Committee, by a

EXHIBIT [illegible]

preponderance of the evidence and not guilty of the third specification; that respondent's license and registration to practice as a physician in the State of New York be suspended for five years and respondent be required to perform 100 hours of public service upon each specification of the charges of which respondent has been found guilty, said suspensions to run concurrently and said public service to total 100 hours; and that execution of the last four years of said suspensions be stayed at which time respondent be placed on probation for said four years under the terms prescribed by the Regents Review Committee as amended as indicated above.

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 15th day of December, 1987.

Commissioner of Education