



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Public

Wendy E. Saunders
Chief of Staff

July 30, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jesse Blane Munoz, M.D.

Redacted Address

Michael Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2405
Albany, New York 12237

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Jesse Blane Munoz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-147) 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 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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 penalties other than suspension or revocation 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
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
JESSE BLANE MUNOZ, M.D.

DETERMINATION

AND

ORDER

BPMC #09-147

A hearing was held on July 22, 2009, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Hearing and a Statement of Charges, both dated May 14, 2009, were served upon the Respondent, **Jesse Blane Munoz, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Andrew J. Merritt, M.D.**, Chairperson, **Pradeep Chandra, M.D.**, and **Mr. Irving S. Caplan**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Michael Bass, Esq.**, of Counsel. The Respondent appeared in person and represented himself.

Evidence was received and transcripts of these proceedings were made.

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

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10). The statute provides for a hearing to determine whether there is a preponderance of evidence in

support of the allegations and specifications in the Statement of Charges and, if so, the penalty to be imposed. In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(29). Copies of the Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: Mr. Randy Irwin
For the Respondent: Jesse Blane Munoz, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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 evidence. All Hearing Committee findings were unanimous.

1. Jesse Blane Munoz, M.D., the Respondent, was authorized to practice medicine in New York State on June 17, 1983, by the issuance of license number 154430 by the New York State Education Department (Petitioner's Ex. 4).

2. From on or about April 26, 2002, to the present, the Respondent was and is subject to Determination and Order BPMC-02-125 ("New York Order") issued by the New York State Department of Health, State Board for Professional Medical Conduct ("BPMC"). The New York Order required, inter alia, the Respondent to perform 150 hours of public service within one year of the effective date of the New York Order, such public service to consist of obstetrical and gynecological services to be provided at a hospital or a clinic serving a primarily indigent population, the location to be chosen by the

Respondent and approved by the BPMC's Office for Professional Medical Conduct ("OPMC"). (Petitioner's Ex. 5).

3. The Respondent has not fulfilled the New York Order's public service requirement (Petitioner's Ex. 6).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York State Education Law Section 6530(29) by violating any term of probation or condition or limitation imposed on the licensee..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The record in this hearing indicates that the Respondent has not performed the community service required by the New York Order in the manner required by that Order. The Respondent was unable to find a hospital or a clinic willing to accept him, the reason being that he had been excluded from the Medicaid Program for a felony conviction. A hospital or a clinic serving a primarily indigent population serves primarily Medicaid recipients. No hospital or clinic would be able to bill Medicaid for his services.

When the Respondent brought this problem to the attention of Mr. Irwin, a Senior Medical Conduct Investigator employed by OPMC, Mr. Irwin said that any type of medical charity work would suffice to satisfy the New York Order. The Respondent testified that he was unable to find such a position because of his felony conviction. Because of this problem, Mr. Irwin told the Respondent that any type of community service work would be sufficient to satisfy the New York Order.

The Respondent testified that he proposed in a telephone conversation with Mr. Irwin that his community service consist of tutoring a student and that Mr. Irwin gave his approval for this plan. The Respondent testified that he then provided more than 150

hours of tutoring. Mr. Irwin, however, testified credibly that he gave no such approval in any telephone conversation. He testified that when approval for community service is given, the approval is always confirmed in a letter. Mr. Wynn testified credibly that there was no such letter in the Respondent's file.

The New York Order requires that the community service be chosen by the Respondent and approved by OPMC. This means approval prior to performance of the service. The Hearing Committee believes Mr. Irwin's testimony and concludes that the Respondent has failed to fulfill the public service requirement of the New York Order.

The Petitioner recommended that the Respondent's license to practice medicine be revoked. The Hearing Committee is not convinced that such a severe penalty is necessary to remedy the situation. A nine-month suspension of the Respondent's license will be imposed. The Respondent will be required to perform 150 hours of community service, either medical or non-medical, during the suspension. The community service must be approved in advance in writing by OPMC. Because the Respondent has not practiced medicine since 2004, he will be required to complete 20 hours of Category 1 continuing medical education during the suspension.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent, Jesse Blane Munoz, M.D., is suspended for nine months.
2. The Respondent is required to complete 150 hours of community service during the period of license suspension. The Respondent must obtain prior written approval of OPMC for the community service.
3. The Respondent is required to complete successfully 20 hours of Category 1 continuing medical education during the period of license suspension.
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Marcellus, New York
7-29, 2009

Redacted Signature

Andrew J. Merritt, M.D.
Chairperson

Pradeep Chandra, M.D.
Irving S. Caplan

APPENDIX I

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



IN THE MATTER
OF
JESSE BLANE MUNOZ, M.D.
PM-08-09-5719-A

NOTICE
OF
HEARING

TO: JESSE BLANE MUNOZ, M.D.

Redacted Address

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on July 22, 2009, at 10:00 a.m., at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180 , and at such other adjourned dates, times, and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A Summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of actual engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of New York Public Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.


Department Attorney: Initial here 

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
May 14, 2009

Redacted Signature


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

Inquiries should be directed to:
Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, NY 12180
(518) 402-0828

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

IN THE MATTER
OF
JESSE BLANE MUNOZ, M.D.
PM-08-09-5719-A

STATEMENT
OF
CHARGES

JESSE BLANE MUNOZ, M.D., Respondent, was authorized to practice medicine in New York State on June 17, 1983, by the issuance of license number 154430 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. From on or about April 26, 2002, to the present, Respondent, was and is subject to Determination and Order BPMC-02-125 (hereinafter "New York Order"), with the New York State, Department of Health, State Board for Professional Medical Conduct (hereinafter "New York Board"), wherein he was and is required, inter alia, to perform 150 hours of public service within one year of the effective date of the New York Order, such public service to consist of obstetrical and gynecological services to be provided at a hospital or a clinic serving a primarily indigent population, the location to be chosen by Respondent and approved by OPMC.

to 07/24/09

B. From on or about April 26, 2002 to the present, Respondent has failed to perform the 150 hours of public service, in violation of the New York Order, set forth in Paragraph A, above.

SPECIFICATION

Respondent violated New York State Education Law §6530(29) by violating any term of probation or condition or limitation imposed on the licensee, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *May 14*, 2009
Albany, New York

Redacted Signature

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