



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299
October 25, 2002

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Magda Lee Binion, M.D.

Redacted Address

Alvia Gordon, Esq.
Meiselman & Gordon LLP
150 Broadway, Suite 1200
New York, New York 10038

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180

RE: In the Matter of Magda Lee Binion, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-332) 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.

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.

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


Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

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

IN THE MATTER
OF
MAGDA LEE BINION, M.D.

COPY

DETERMINATION
AND
ORDER

BPMC NO. 02-332

A Commissioner's Order and Notice of Hearing, and a Statement of Charges, both dated August 8, 2002, were served upon the Respondent, **MAGDA LEE BINION, M.D.**. **FRANK E. IAQUINTA, M.D.**, Chairperson, **WILLIAM K. MAJOR, M.D.** and **MS. DONNA MICKLEY**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 16, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and by **ALVIN GORDON, ESQ.**.

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, in part, 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), based upon her conviction of a crime under Federal law.

This case was also brought pursuant to Education Law Section 6530(12)(b), which, among other things, authorizes the Commissioner to issue a summary suspension prohibiting a physician from practicing medicine pending a hearing when the physician has been convicted of a felony under Federal law.

A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Magda Lee Binion, M.D.
Lawrence S. Reed, M.D.
Mona Hannah, Esq.
Thomas Fabry, M.D.
Reginald P. Puckett, 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 unless otherwise specified.

1. **MAGDA LEE BINION, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 7, 1983, by the issuance of license number 155717 by the New York State Education Department (Ex. 4).
2. On December 12, 2001, the United States District Court for the Southern District of New York issued an Amended Judgement reflecting Respondent's conviction on 7 counts of a felony Indictment charging her and a co-defendant with Conspiracy, Health Care Fraud and Mail Fraud. The convictions related to a scheme whereby Respondent, who is an anesthesiologist, and her co-conspirator (a physician who provided obstetrical, gynecological and fertility services) caused bills to be submitted to insurance companies for emergency or urgent gynecological surgeries when, instead, Assisted Reproductive Technology (ART) procedures were performed (many insurance companies do not cover, or fully cover, ART procedures). As a result of her conviction, Respondent was sentenced to 3 months' imprisonment, 9 additional months' of home confinement and three years of supervised release. Respondent was also required to make \$57,325 in restitution and to pay a \$700 assessment (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent's conviction of felonies under Federal Law constitutes misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(ii).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of a crime under Federal Law:

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that Respondent was convicted of felonies under Federal Law as set forth in Fact-Finding 2, above. This conviction constitutes misconduct pursuant to New York Education Law §6530(9)(a)(ii), and the only issue to be addressed, pursuant to Public Health Law Section 230(10)(p), is the penalty to be imposed.

It is noted at the outset that in reaching this determination, the Hearing Committee did not consider Respondent's testimony attempting to downplay the seriousness of her role in the criminal undertaking that led to her conviction. Consideration of this issue is precluded by the statute governing this proceeding, which provides that "[s]uch 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." (Public Health Law Section 230(10)(p)). The nature of Respondent's participation in the criminal scheme is clearly set

forth in the Indictment upon which she was convicted, and findings contained therein are binding upon the Hearing Committee.

The Hearing Committee is of the opinion that a one-year suspension of Respondent's license is the appropriate penalty for her misconduct, to run from the effective date of the Commissioner's Order which, in part, resulted in the scheduling of this hearing. However, the Hearing Committee determines that all but 3 months of this suspension should be stayed, and that Respondent's license should not be revoked, in light of the evidence presented at the hearing.

In this regard, the Hearing Committee notes that Respondent has already paid a heavy penalty for the conduct leading to her conviction. In addition to the stigma of the criminal case itself, Respondent was incarcerated for three months and separated from her children during that period. She has also been compelled to make significant restitution.

Respondent testified that she has had her billings taken over by an attorney, Mona Hannah, who testified herself by telephone. Ms. Hannah testified that she now goes over bills with Respondent before they are submitted to payers to ensure their accuracy. The Hearing Committee is of the opinion that this change in procedures, along with Respondent's obvious remorse for her involvement in the criminal activity, make it seem unlikely that she would attempt engage in such illegal activity again.

The Hearing Committee was also impressed with the testimony of physicians who have employed Respondent's services (Lawrence S. Reed, M.D., Reginald P. Puckett, M.D. and Thomas Fabry, M.D.) as to her skill as an anesthesiologist and her caring relationships with patients. Respondent testified credibly that she has had no patient care problems related to her anesthesia services, and, as far as this record reveals, Respondent otherwise has an unblemished record. The Hearing Committee is of the opinion that the

suspension imposed in this decision, coupled with the penalties imposed by the criminal court, are sufficient to impress upon Respondent the need for strict compliance with applicable legal and medical standards in the future, and to protect the residents of this state from future misconduct on her part. The Hearing Committee is of the opinion, in light of the foregoing, that probation is unnecessary.

ORDER

IT IS HEREBY ORDERED THAT:

The medical license of **MAGDA LEE BINION, M.D.** is hereby **SUSPENDED** for a period of one year, to run from the effective date of the Commissioner's Order of August 8, 2002. **All but THREE MONTHS** of this suspension are **STAYED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: LAKE SUCCESS, NEW YORK

October 22, 2002

Redacted Signature

FRANK E. IAQUINTA, M.D.
Chairperson

WILLIAM K. MAJOR, M.D.
MS. DONNA MICKLEY

APPENDIX 1



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

IN THE MATTER
OF
MAGDA LEE BINION, M.D.
NY-00-09-4308-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: MAGDA LEE BINION, M.D.
Redacted Address

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined MAGDA LEE BINION, M.D., has been found guilty of committing acts constituting felonies under federal law (United States District Court, Southern District of New York).

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately MAGDA LEE BINION, M.D., Respondent, (license number 155917), shall not practice medicine in the State of New York. This order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 18th day of September, 2002 at 10:00 am in the forenoon at Hedley Park Place, 5th Floor, 433 River Street, Troy, New York and at such other adjourned dates, times, and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

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. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on her behalf, to issue or have subpoenas issued on her behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against her. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing

date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction 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 MAY BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE
URGED TO OBTAIN AN ATTORNEY FOR THIS
MATTER.**

DATED: Albany, New York

8.8, 2002

Redacted Signature

DENNIS P. WHALEN
Executive Deputy Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

MAGDA LEE BINION, M.D.
NY-00-09-4308-A

STATEMENT

OF

CHARGES

MAGDA LEE BINION, M.D., the Respondent, was authorized to practice medicine in New York state on October 7, 1983, by the issuance of license number 155917 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 9, 2001, in the United States District Court, Southern District of New York, Respondent was found guilty of one (1) count Conspiracy to Commit Mail Fraud, Health Care Fraud, and False Statements in violation of 18 U.S.C. §371, one (1) count Health Care Fraud in violation of 18 U. S.C. §1347 and 2, and five (5) counts of Mail Fraud in violation of 18 U.S.C. §1341 and 2, and on or about November 20, 2001, was sentenced to three (3) months imprisonment, upon release from imprisonment three(3) years supervised release, with special conditions of nine (9) months home confinement, 500 hours of community service, \$44,857.00 restitution, and a \$700.00 special assessment.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *August 8*, 2002
Albany, New York

Redacted Signature

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