

Nirav R. Shah, M.D., M.P.H.
Commissioner

NEW YORK
state department of
HEALTH

Public

Sue Kelly
Executive Deputy Commissioner

May 21, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512

Mubashar Choudry, M.D.
11119 Rockville Pike
Rockville, Maryland 20852

Mubashar Choudry, M.D.

REDACTED

RE: In the Matter of Mubashar Choudry, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-148) 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), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
OF :
MUBASHAR CHOUDRY, M.D. : AND
CO-11-12-6746-A : ORDER
-----X
BPMC #13-148

A Notice of Referral Proceeding, dated October 22, 2012, and a Statement of Charges, dated October 24, 2012, were served upon the Respondent, Mubashar Choudry, M.D. **JILL M. RABIN, M.D. (Chair), LELAND DEANE, M.D., M.B.A., and CAROLYN C. SNIPE**, 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Jude B. Mulvey, Esq., Associate Counsel. The Respondent appeared *pro se*. A hearing was held on March 13, 2013. Evidence was received and witnesses sworn and heard 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 §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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b) in that he was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of this state. He is also charged with having violated New York Education Law §6530(9)(d) by having had his license to practice medicine suspended in another state after disciplinary action was instituted by said other state. A copy of the Statement of Charges is attached to this Determination and Order in Appendix

I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses 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 evidence.

1. Mubashar Choudry, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on August 11, 1988 by the issuance of license number 175821 by the New York State Education Department. (Exhibit #3).

2. On or about October 13, 2011, the Maryland State Board of Physicians (hereinafter "Maryland Board"), by a Final Decision suspended Respondent's license to practice medicine for six months, stayed the suspension, and placed Respondent on a minimum five year term of probation with conditions including enrollment and cooperation with the Maryland Professional Rehabilitation Program, and to abstain from the use of alcohol. This action was based upon Respondent's unprofessional conduct in the practice of medicine and providing professional services while under the influence of alcohol. (Exhibit #4).

3. Respondent had voluntarily enrolled in the Maryland Physician Health Program on or about April 16, 2009, shortly after the incident which resulted in the disciplinary action, and more than two years before the issuance of the Maryland Order. (Exhibit B).

4. On December 14, 2010, Paul G. Prunier, M.D., a psychiatrist, issued a report of his evaluation of Respondent. Dr. Prunier found no evidence of a substance abuse disorder. (Exhibit A, Tab 4).

5. Respondent also underwent an evaluation by John Gotlewski, Psy. D., on September 24, 2009 and again on December 22, 2010. Dr. Gotlewski found insufficient evidence to support a diagnosis of either Alcohol Dependence Disorder (DSM-IV 303.90) or Alcohol Abuse Disorder (DSM-IV 305.00). (Exhibit A, Tab 5).

6. Respondent provided an extensive collection of drug and alcohol screens. At each random collection, Respondent tested negative for drugs and alcohol. (Exhibit A, Tab 7).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence clearly established that the Respondent was

disciplined by the Maryland Board, following a contested proceeding. The evidence demonstrates that Respondent was found guilty of practicing while impaired by alcohol. Respondent's conduct, had it occurred in New York, would constitute professional misconduct in violation of New York Education Law §6530(7) [practicing the profession while impaired by alcohol]. Therefore, the First and Second Specifications of professional misconduct shall be sustained.

The Hearing Committee wishes to take note of the fact that this action is taken purely in response to the disciplinary proceeding instituted by the Maryland Board, and does not reflect any evidence of new wrongdoing by Respondent.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that no action shall be taken against the Respondent's license to practice medicine in New York State at this time. In the event that Respondent shall decide to resume medical practice in this State, he shall be required to give ninety days' notice to the Board. He shall also be required to meet with the Director of the Office of Professional Medical Conduct and to comply with any conditions placed upon his resumption of practice in New York

State. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

All of the evidence available to this Committee demonstrated that Respondent's one documented instance of practicing while impaired represented an aberration brought on by marital troubles. Neither of the evaluations conducted on behalf of the Maryland Board indicated any sign of alcohol or drug dependence. Respondent voluntarily entered into a treatment agreement with the Maryland Physician Health program well before the requirement imposed by the Maryland Board. He presented ample evidence of continued sobriety in the form of extensive random drug and alcohol screens.

Respondent appeared to be genuinely mortified by the conduct which resulted in his discipline by the Maryland Board. He paid a stiff financial price in terms of loss of participation in various insurance programs, and the expense of complying with the Maryland Order. It is the considered opinion of this Hearing Committee that Respondent does not present any risk of danger to the public.

Respondent does not have any present intent to return to New York State to practice medicine. In the event that he does so choose, he shall be required to inform the Director of the

Office of Professional Medical Conduct with at least 90 days' notice. He shall then be required to meet with the Director or a designated representative, and to comply with any necessary conditions imposed for his return to practice. We are satisfied that this will amply protect the people of this State, while giving Respondent the option of returning to New York State.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) are **SUSTAINED**;
2. No action shall be taken against Respondent's license to practice as a physician in the State of New York. In the event that Respondent shall decide to resume medical practice in this State, he shall be required to give ninety days' notice to the Board. He shall also be required to meet with the Director of the Office of Professional Medical Conduct or a designated representative and to comply with any conditions placed upon his resumption of practice in New York State.

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: New York, New York

my 14th, 2013

REDACTED

~~JYLL M. / RABIN, M.D. (CHAIR)~~

~~ELAND DEANE, M.D., M.B.A.
CAROLYN SNIPE~~

TO: Jude B. Mulvey, Esq.
Associate Counsel
New York State Department of Health
Corning Tower, Room 2512
Albany, New York 12237

Mubashar Choudry, M.D.
11119 Rockville Pike
Rockville, MD 20852

Mubashar Choudry, M.D.

REDACTED

APPENDIX I

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

IN THE MATTER
OF
MUBASHAR CHOUDRY, M.D.
CO-11-12-6746-A

STATEMENT
OF
CHARGES

MUBASHAR CHOUDRY, M.D., Respondent, was authorized to practice medicine in New York State on August 11, 1988, by the issuance of license number 175821 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 13, 2011, the Maryland State Board of Physicians (hereinafter "Maryland Board"), by a Final Decision (hereinafter "Maryland Decision"), suspended Respondent's license to practice medicine for six months, stayed the suspension, and placed Respondent on a minimum five year term of probation with conditions including enroll and cooperate with the Maryland Professional Rehabilitation Program and abstain from the use of alcohol, based on unprofessional conduct in the practice of medicine and providing professional services under the influence of alcohol.

B. The conduct resulting in the Maryland Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York State Education Law §6530(7) (practicing the profession while impaired by alcohol)

SPECIFICATIONS

First Specification

Respondent violated New York State Education law §6530 (9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, the that Petitioner charges:

1. The facts in Paragraphs A and/or B

Second Specification

Respondent violated New York State Education Law §6530(9)(d) by having her license to practice medicine suspended after a disciplinary proceeding was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

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

DATED: *October 24*, 2012
Albany, New York

REDACTED

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