

January 11, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Raymond Diaz, M.D.
REDACTED

Raymond Diaz, M.D.
North Shore Gastroenterology Associates
233 East Shore Road – Suite 101
Great Neck, New York 11023

Ralph A. Erbaio, Jr., Esq.
94 Barrett Hill Road
Lake Carmel, New York 10512

RE: In the Matter of Raymond Diaz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-15) 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. 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 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

IN THE MATTER

DETERMINATION

OF

AND

RAYMOND DIAZ, M.D.
CO-12-04-2055-A

COPY

ORDER

BPMC #13-15

A hearing was held on December 6, 2012, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated August 28, 2012, were served upon the Respondent, **Raymond Diaz, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Kendrick A. Sears, M.D.**, Chair, **Robert A. Catalano, M.D., M.B.A.**, and **Thomas W. King, Jr. M.P.A., P.E.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Michael G. Bass, Esq.**, of Counsel. The Respondent, **Raymond Diaz, M.D.**, did appear, with counsel, **Ralph A. Erbaio, Jr., Esq.** of Lake Carmel, New York. Evidence was received and a transcript of these proceedings was 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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 §6530(9)(a)(i) – by having been found guilty of a crime, based on a plea of guilty, *i.e.* Aggravated Driving While Intoxicated, in violation of New York Vehicle and Traffic Law, §1192.2X, a class U misdemeanor.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Raymond Diaz, 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. **Raymond Diaz, M.D.**, the Respondent, did appear at the hearing with counsel who acknowledged diligent attempts at service and waived any objection to jurisdiction. (Prehearing Conference, T. 3)
2. **Raymond Diaz, M.D.**, the Respondent, was authorized to practice medicine in New York State on April 27, 1999, by the issuance of license number 213794 by the New York State Education Department. (Petitioner's Ex. 4).
3. On or about February 6, 2012, in District Court of Nassau County, Hempstead, State of New York, Respondent was found guilty, based on a plea of guilty, of Aggravated Driving While Intoxicated, in violation of New York Vehicle And Traffic Law, §1 192.2X, a class U misdemeanor, and was sentenced on April 13, 2012, to a \$2,000.00 fine, license revocation, 5 days imprisonment, and an ignition interlock device for three years.
4. The above conviction constitutes misconduct under the laws of New York State, pursuant to the following section of New York State law:
 1. New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York State law.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law §6530(9)(a)(i)) by being convicted of committing an act constituting a crime under New York State law ..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel. The Administrative Officer, after considering the documentary evidence, which included evidence of the attempts at contacting and serving the Respondent and the acknowledgement of service by the Respondent's attorney ruled that the Petitioner had met the requirements of law for due diligence in the service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed. The record in this case indicates that Respondent has been found guilty, based on a plea of guilty, to the charge of driving while under the influence of alcohol, a misdemeanor.

At the hearing, the Respondent's counsel presented testimonial letters from Respondent's colleagues and clergy. The letter from Monsignor Clerkin attested to the respect of the Church community for the Respondent. (Exhibit G). Exhibit F is from the Vice President of St. Francis Hospital attesting to the respect and admiration for the Respondent by the staff at the Hospital. Exhibit E is a more detailed letter from the

medical director of St. Francis, Dr. Tannenbaum, attesting to the good reputation and respect of the staff at St. Francis for the Respondent. Exhibit D is a testimonial from Dr. Bernstein of the North Shore, Long Island Jewish Medical Group, attesting to their respect and admiration for Respondent .

In addition to these testimonials, Attorney Erbaio presented a psychiatric update from Dr. Block, Exhibit C, showing the progress the Respondent has made in sobriety and his involvement with the Committee for Physicians Health. According to Dr. Block, the Respondent has made a positive recovery and is in complete remission. Similarly, the letter from the Committee for Physician's Health, dated November 28, 2012, Exhibit B, shows that the Respondent continues to comply with this Committee's program through a thorough regimen of monitoring and appropriate treatment. Most significantly, the letter from this Committee concluded that the Respondent is able to practice medicine safely.

The Hearing Committee was impressed with Dr. Diaz's character testimonials and by the evidence of the good work that the Respondent has been doing on Long Island. As to the penalty, the Department's attorney acknowledged that the Respondent is, in his estimation, a good physician, (T. 32) but because of the level of the offense he recommended a Censure and Reprimand and a fine. The Hearing Committee noted that the Respondent was being carefully monitored by the Committee for Physician's Health and that the Public was protected. The Hearing Committee determined, unanimously, that the Respondent has already paid for his offense and, while considering the full range of penalties, determined that a Censure and Reprimand would be appropriate in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded for commission of a misdemeanor under New York State Law .
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).
3. ~~This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).~~

DATED: Syracuse, New York
January 10, 2013

REDACTED


Kendrick A. Sears, M.D., Chair,

Robert A. Catalano, M.D.,
Thomas W. King, Jr. M.P.A., P.E.

To:

Michael G. Bass, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

Raymond Diaz, M.D.

REDACTED

Raymond Diaz, M.D.
North Shore Gastroenterology Associates
233 East Shore Road, Suite 101
Great Neck, NY 11023

Ralph A. Erbaio, Jr., Esq. Attorney for Respondent
94 Barrett Hill Road
Lake Carmel, New York 10512

APPENDIX I

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

RAYMOND DIAZ, M.D.
CO-12-04-2055-A

NOTICE OF

REFERRAL

PROCEEDING

TO: Raymond Diaz, M.D.
REDACTED

Raymond Diaz, M.D.
North Shore Gastroenterology Associates
233 East Shore Road, Suite 101
Great Neck, NY 11023

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 8th day of November, 2012, at 10:30 a.m., at the offices of the New York State Department of Health, 150 Broadway, Suite 510, Albany, NY 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also

may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) 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. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated 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 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here) _____

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

August 28, 2012

REDACTED

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

Inquiries should be addressed to:

Joel E. Abelove
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER
OF
RAYMOND DIAZ, M.D.
CO-12-04-2055-A

STATEMENT
OF
CHARGES

RAYMOND DIAZ, M.D., Respondent, was authorized to practice medicine in New York State on April 27, 1999, by the issuance of license number 213794 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 6, 2012, in District Court of Nassau County – Hempstead, State of New York, Respondent was found guilty, based on a plea of guilty, of Aggravated Driving While Intoxicated, in violation of New York Vehicle And Traffic Law, §1192.2X, a class U misdemeanor, and was sentenced on April 13, 2012, to a \$2,000.00 fine, license revocation, 5 days imprisonment, and an ignition interlock device for three years.

SPECIFICATION

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

1. The facts in paragraph A.

DATED: *August 28*, 2012
Albany, New York

REDACTED

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