



**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

Public

April 29, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mary Elizabeth Dore, M.D.

REDACTED ADDRESS

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street - 4th Floor
Troy, New York 12180

Sharif Mahdavian, Esq.
Friedman & Mahdavian
The Bar Building
36 West 44th Street
Suite 816
New York, New York 10036

RE: In the Matter of Mary Elizabeth Dore, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-87) 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

**Sean D. O'Brien, Director
Bureau of Adjudication**

SDO:cah

Enclosure

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

**IN THE MATTER
OF
MARY ELIZABETH DORE, M.D.**

DETERMINATION

AND

ORDER

BPME #05-87

COPY

A Notice of Hearing and Statement of Charges, both dated January 27, 2005, were served upon the Respondent, **MARY ELIZABETH DORE, M.D.** **RICHARD ASHLEY, M.D.**, Chairperson, **ROY M. SCHOEN, M.D.** and **REV. EDWARD HAYES**, duly designated members of the State Board for Professional Medical Conduct ("the Board"), 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 March 17, 2005 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.**, of Counsel. The Respondent appeared in person and by **SHARIF MAHDAVIAN, 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.

PROCEDURAL HISTORY

Pre-Hearing Conference	March 17, 2005
Hearing Date	March 17, 2005
Witnesses for Petitioner	None
Witnesses for Respondent	Mary Elizabeth Dore, M.D. (respondent) Christina Therrien (Committee for Physicians' Health) Howard Dalton (Pius XII Chemical and Substance Abuse Program)

STATEMENT OF CASE

The State Board for Professional Misconduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq of the Public Health Law of the State of New York [hereinafter P.H.L.]).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "OPMC" or "the Department") pursuant to §230 of the P.H.L. Mary Elizabeth Dore, M.D. ("Respondent") is charged with three specifications of professional misconduct, as defined in §6350 of the Education Law of the State of New York ("Education Law"). Specifically, Respondent is charged with practicing the profession fraudulently (§6530(1)); having been convicted of a crime under New York State Law (§6530(9)(a)(ii)); and willfully filing a false report (§6530(21)).

These charges concern Respondent's conviction for driving while intoxicated and subsequent failure to reveal this conviction in an interview with staff of OPMC. A copy of the Statement of Charges is attached to this Determination and order as Appendix I.

Respondent admitted the allegations in the statement of charges.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. All findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("Tr."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding.

Having considered documentary evidence presented by the Petitioner and having heard testimony and considered documentary evidence presented by the Respondent, the Hearing Committee hereby makes the following findings of fact:

1. **MARY ELIZABETH DORE, M.D.**, the Respondent, was authorized to practice medicine in New York State on May 21, 2001, by the issuance of license number 221150 by the New York State Education Department (Ex. 4).
2. On January 15, 2004, Respondent was convicted of driving while intoxicated in the Town Of Coeymans Justice Court, State of New York. As a result of this conviction, Respondent was assessed a fine of \$1,000 and surcharge of \$125 (Ex.5)¹.
3. On April 21, 2004, Respondent was interviewed by Annette Palk of OPMC. During this interview, which related to a previous order of the Board, Respondent, when asked whether she had been arrested or suffered any criminal convictions, mentioned a 2002 arrest for DWI, but did not mention the January 15, 2004 DWI conviction (Ex. 6).

¹ Although the Certificate of Conviction mentions "county jail", "community service" and "probation", no details about these terms is provided, and it is not clear whether any actual sentence other than the fine and surcharge was imposed.

DEFINITIONS OF MISCONDUCT

Respondent is charged with three specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of conduct that constitute professional misconduct, but does not provide definitions of the various types of misconduct. However, the courts have had occasion to further define some of the conduct that can constitute misconduct in the practice of medicine. Respondent was advised by the Hearing Committee chairman at the commencement of the hearing of the existence and availability of this memorandum.

The definition of misconduct covered by this memorandum that is applicable to this case is that of the fraudulent practice of medicine, which is the intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine and with the intent to deceive. Choudry v. Sobol ("Choudry"), 170 A.D. 2d 893, 566 N.Y.S. 2d 723 (3d Dept. 1991) citing Brestin v. Commissioner of Education ("Brestin") 116 A.D. 2d 357, 501 N.Y.S. 2d 923 (3d Dept. 1986) (dentistry). To sustain a charge that a licensee has engaged in the fraudulent practice of medicine, the Committee must find that: 1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed; 2) the licensee knew the representation was false; and 3) that the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D. 2d 315, 266 N.Y.S. 2d 39 (3d Dept. 1966), *aff'd.* 19 N.Y. 2d 679, 278 N.Y.S. 2d 870 (1967). The licensee's knowledge and intent may properly be inferred from facts found by the Committee, but the Committee must specifically state the inferences it is drawing regarding knowledge and intent, Choudry, supra at 894 citing Brestin. Fraudulent intent may be inferred from evidence that the licensee was aware of the true state of facts at the time false responses

were given. Saldanha v. DeBuono, 256 A.D.2d 935, 681 N.Y.S. 2d 874 (3d Dept. 1998).

The other categories of misconduct at issue in this case are more specifically defined in Education Law §6530, and are set forth as applicable below.

GENERAL CONCLUSIONS

The Respondent did not contest the conclusions reached by the Department that her conviction for DWI constituted misconduct or that she had deliberately provided misinformation during her interview with OPMC staff on April 21, 2004. Respondent committed misconduct under Education Law §6530(9)(a)(ii) by being convicted of a crime. She also committed misconduct under §6530(1) (practicing the profession fraudulently) and §6530(21) (willfully making or filing a false report) by deliberately failing to report this conviction to OPMC staff when asked about it during the interview on April 21, 2004.

Inasmuch as Respondent has admitted the conduct underlying the charges in this case, the only issue to be addressed is the appropriate penalty for this misconduct, and the analysis of this issue is set forth below.

DETERMINATION AS TO PENALTY

The Hearing Committee concludes, for reasons to be set forth and discussed below, that the appropriate penalty to be imposed in this case is a stringent five-year period of probation.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L §230-a, including:

- (1) Censure and reprimand;
- (2) Suspension of the license, wholly or partially;
- (3) Limitations of the license to a specified area or type of practice;
- (4) Revocation of the license;
- (5) Annulment of the license or registration;
- (6) Limitations on registration or the issuance of any further license;

- (7) The imposition of monetary penalties;
- (8) A course of education or training;
- (9) Performance of public service, and
- (10) Probation.

The acts of misconduct committed by Respondent in this case were directly related to what the evidence establishes is a serious alcohol problem. The DWI conviction at issue here was Respondent's second such conviction. The first conviction was in late 2002 and resulted in a disciplinary order by the Board effective April 6, 2004 (see Ex. 6), the contents of which are not at issue in this proceeding. The Hearing Committee concludes that Appellant's failure to disclose the 2nd DWI conviction to OPMC during the interview on 4/21/04 was also related to her alcohol problem (see the testimony of Mr. Dalton on this point at Tr. 105).

The Hearing Committee's primary concern in this particular case in determining the appropriate penalty to be imposed for Respondent's misconduct is whether she can safely practice medicine in the future, and, if so, under what conditions. The Hearing Committee believes that the sentences meted out by the courts, coupled with the mental anguish that Respondent has suffered since her convictions, are significant punishments for the acts of misconduct, which, importantly, did not directly relate to her practice of medicine, and that revocation or suspension of her license might be a more appropriate penalty if she was not making significant efforts to deal with her problem.

The Hearing Committee concludes that Respondent can practice safely, provided that she abstains from any alcohol or drug use, and provided that adequate protections are in place to enforce compliance with a sobriety mandate. The Hearing Committee is guided in making its determination as to Respondent's prospects for future safe practice by the testimony of the experts who appeared on her behalf at the hearing, Christina Therrien

(Respondent's counselor at the Committee for Physicians' Health of the State Medical Society) and Howard Dalton (Respondent's therapist at the Pius XII Chemical and Substance Abuse Program). Both professionals have dealt with Respondent since before the 2nd DWI conviction and have insight into Respondent's situation, including her past checkered history of sobriety efforts. .

Both professionals opined that Respondent's likelihood of abstinence has increased since she underwent an intensive (90 day) in-patient rehabilitation at the Healthcare Connection in Tampa, Florida (Tr. 37-38, Ex. 6) between October 9, 2003 and January 9, 2004. Respondent's last drink was on October 7, 2003, and her urine monitoring screens (supervised by CPH) have since that time been negative (see Ex. A).

Ms. Therrien testified that Respondent has made several significant changes that bode well for her prospects, namely her increased honesty about her problem, her successful sobriety since October 7, 2003, and her increased involvement in A.A. and N.A. (Tr. 86). Mr. Dalton testified that Respondent's attitude and therapy attendance have improved since her in-patient treatment, and that she now admits that she has a problem and needs help (Tr. 103-104). Mr. Dalton, who is a credentialed alcoholism and substance abuse counselor, testified that he trusts Respondent now without reservation, and that he would not hesitate to refer patients to her (Tr. 111-112).

Respondent admitted at the hearing that she was not honest about her alcohol problem with anyone, including herself, until after the inpatient treatment and her provision of misinformation during her interview with Ms. Palk, after which she did voluntarily report the 2nd DWI upon her license re-registration (Tr. 45). The Hearing Committee believes that Respondent is strongly motivated to maintain sobriety and to continue to deal with the underlying psychological stressors that apparently contributed to her abuse of alcohol, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (Tr. 13-14). In fact, the Hearing Committee believes that the fact that Respondent was able to complete medical school and become licensed to practice despite this history indicates that she is capable of overcoming adversity, that she can use this strength to help conquer her alcohol problem, and that practicing medicine will, if anything, help her to do so.

Given Respondent's motivation, on the one hand, but her prior history of relapses on the other, the Hearing Committee accepts the recommendations of Ms. Therrien as to the nature of a probation that would afford both maximum protection for the residents of New York State against the potential for a relapse of Respondent's abuse of alcohol, and a structure within which Respondent can practice, thereby retaining her ability to make a living and to keep her skills current.

The details of this probation, which the Hearing Committee feels should be five years in duration, are set forth in the attached order.

ORDER

IT IS HEREBY ORDERED THAT:

1. **MARY ELIZABETH DORE, M.D., is hereby placed on probation for a period of FIVE (5) years.**
2. **The terms of Respondent's probation are as follows:**
 - A. **Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by her profession.**
 - B. **Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.**
 - C. **Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of her compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.**
 - D. **The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if she is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.**
 - E. **Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and her staff at practice locations or OPMC offices.**
 - F. **Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.**

- G. Respondent shall remain drug/alcohol free.
- H. Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and/or Caduceus.
- I. Respondent shall notify all treating physicians of her history of alcohol dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
- J. Respondent shall practice only when monitored by qualified health care professionals, including a practice monitor and sobriety monitor proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships that would pose a conflict with monitoring responsibilities.
- K. Respondent shall ensure that the monitors are familiar with Respondent's alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
- L. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by her or a test is positive for any unauthorized substance.
- M. Respondent shall meet with the sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying her sobriety. These reports are to include forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than six (6) per month for the first 12 months of the period of probation, at least two of which shall be ethyl glucuronide screens. Thereafter, the screens shall be at a frequency and of a type to be proposed by the sobriety monitor and approved by OPMC. The sobriety monitor's reports shall also include an assessment of self-help group attendance (e.g., AA/NA/Caduceus, etc.), 12-step progress, etc.
- N. Respondent shall avoid all substances that may cause positive urines such as herbal tea, poppy seeds, mouthwash, or cough medication. Any positive result will be considered a violation of this Order.
- O. Respondent shall engage and continue in therapy with a therapist in accordance with a treatment plan approved by the Director, OPMC.
- P. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether she is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if she

leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.

Q. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC. Respondent shall bear all expenses of such evaluation.

R. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

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: Garden City, New York
28 April, 2005

REDACTED SIGNATURE

RICHARD ASHLEY, M.D.
Chairperson

ROY M. SCHOEN, M.D.
REV. EDWARD HAYES

APPENDIX 1



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

-----X

IN THE MATTER : NOTICE
OF : OF
MARY ELIZABETH DORE, M.D. : HEARING
CO-04-04-4711-A

-----X

TO: MARY ELIZABETH DORE, M.D.
REDACTED ADDRESS

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. 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 for Professional Medical Conduct on the 17th of March 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, 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. 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 Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five(5) 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 N.Y. Pub. Health Law Section 230(10)(c), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten(10) days prior to the date of the hearing. Any Charge and 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 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.

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 THE OTHER SANCTIONS SET OUT IN
NEW YORK PUBLIC HEALTH LAW SECTION 230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
January 27, 2005

REDACTED SIGNATURE
~~PETER D. VAN BUREN~~
Deputy Counsel

Inquiries should be directed to:

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

IN THE MATTER
OF
MARY ELIZABETH DORE, M.D.
CO-04-04-4711-A

STATEMENT
OF
CHARGES

MARY ELIZABETH DORE, M.D., the Respondent, was authorized to practice medicine in New York state on May 21, 2000, by the issuance of license number 221150 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 15, 2004, in the Town of Coeymans Justice Court, Ravena, New York, Respondent was found guilty, based on a plea of guilty, of Driving while Intoxicated, in violation of New York Vehicle and Traffic Law §1192.2, a misdemeanor, and was sentenced to county jail, a \$1,000.00 fine, a \$125.00 surcharge, community service, and probation.

B. On or about April 21, 2004, at 433 River Street, Troy, New York, as a term of Order # BPMC 04-63, in an interview conducted by Annette K. Palk, Senior Medical Conduct Investigator, Office of Professional Medical Conduct, New York State Department of Health, in response to a question about any arrests and/or criminal convictions, Respondent knowingly and intentionally failed to reveal the criminal conviction described in Paragraph A above.

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(1) by practicing the profession fraudulently, in that Petitioner charges:

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

SECOND 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:

2. The facts in Paragraph A.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(21) by willfully making a false report, required by the department of health, in that Petitioner charges:

3. The facts in Paragraphs A, B, and/or C.

DATED: *January 27*, 2005
Albany, New York

REDACTED SIGNATURE

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