



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

June 30, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sarwar Murtuza, M.B.B.S.
8237 Austin Traphill Road
Elkin, North Carolina 28621

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 Sarwur Murtuza, M.B.B.S.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-103) 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,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

IN THE MATTER
OF
SARWAR MURTUZA, M.B.B.S.

COPY

**DETERMINATION
AND
ORDER**

BPMC NO. 04-103

A Notice of Hearing and Statement of Charges, both dated March 16, 2004, were served upon the Respondent, **SARWAR MURTUZA, M.B.B.S.** ("the Respondent"; erroneously referred to in many of the Department's documents as "Sarwar" Murtuza). **JOEL H. PAULL, D.D.S., M.D.**, Chairperson, **SHELDON H. PUTTERMAN, M.D.** and **MS. FRANCES TARLTON**, 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 April 21, 2004, 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.

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 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 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 statement of charges upon which this proceeding was commenced alleged that Respondent: had, on or about October 1, 2003, surrendered his North Carolina medical license, based upon his inability to practice medicine safely by reason of alcohol or other substance abuse; and had, on or about November 14, 2003, been convicted, based upon a guilty plea, of Driving Under the Influence. Respondent is charged with professional misconduct in New York pursuant to Education Law Section 6530(9)(a)(iii) based upon the criminal conviction and Section 6530(9)(d), based upon the license surrender in North Carolina. 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:

Respondent

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. **SARWAR MURTUZA, M.B.B.S.**, the Respondent, was authorized to practice medicine in New York State on July 30, 1982, by the issuance of license number 151005 by the New York State Education Department (Ex. 4).
2. On May 16, 2003, Respondent was arrested for Driving Under the Influence in Carter County Tennessee. Respondent pled guilty to this offense in the General Sessions Court of Carter County on November 14, 2003, and was sentenced to 11 months and 29 days of incarceration, suspended except for 2 days time actually served, one year's probation, and fined \$350 plus costs (Ex's. 5, 6).
3. On September 27, 2003, while being investigated by the North Carolina Medical Board ("the North Carolina Board") after the arrest, Respondent voluntarily surrendered his medical license in that state. The North Carolina Board reported to the National Practitioner Data Bank that the surrender was accepted because Respondent was unable to practice safely due to alcohol or other substance abuse (Ex.'s 5 and 7).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the circumstances leading to the North Carolina Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(d), in that they would have constituted misconduct in New York, had Respondent been practicing in this state at the time.

In addition, Respondent's conviction of DUI constitutes misconduct under New York Education Law §6530(9)(a)(iii) because the conduct leading to the conviction would also constitute a crime in New York State, if committed here.

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by having been convicted of a crime in another state for conduct that would, if committed in New York State, constitute a crime under the laws of New York State.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having surrendered his license to practice medicine after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that the North Carolina Board accepted Respondent's surrender of his North Carolina medical license in the face of an investigation into the circumstances leading to his arrest for DUI in Tennessee, and that he was thereafter convicted of that offense based upon a guilty plea. The criminal conviction and Tennessee Board action are binding on this tribunal pursuant to Public Health Law §230(10)(p), the statute governing this hearing, and the only issue remaining to be decided is the penalty to be imposed in New York State. This focus on the penalty to be imposed is intended in part to afford a Respondent the opportunity to demonstrate that he can practice medicine safely and that he can be relied upon not to commit future acts of misconduct, should he be allowed to continue to practice.

In this case, Respondent presented no evidence in support of the proposition that he could practice safely if allowed the continued opportunity to do so in New York State, and his testimony and demeanor raised more questions than they answered. For example, Respondent denied having been under the influence of alcohol or any "illegal" drugs at the time of his arrest, but was unable to adequately explain why he pled guilty to a driving offense, or why he surrendered his license, if he was innocent of the charges against him.

Respondent did testify that he was having a "bad reaction with medication" at the time of his arrest (Tr. 10), and mentioned prescription painkillers and treatments for tremors and minor seizures (Tr. 10, 19). Respondent also admitted, in an attempt to explain why the arresting officers felt he was under the influence of illicit substances, that he was having problems with hand/eye coordination at the time, and that he was having speech difficulties (Tr. 10,12). Respondent presented no documentation of exactly what his medical problems

are, but he testified that he is currently unemployed, cannot work more than 4 hours per day or 16 hours per week, and that he has applied for disability benefits (Tr. 15, 20, 22-23). Respondent also mentioned having had a neurological examination, the results of which he did not agree with, but the reports were not available for the Hearing Committee's consideration.

In addition to the questions Respondent's testimony raises about his physical condition, the Hearing Committee also has concerns regarding Respondent's psychological condition. His affect appeared flat and depressed. Since the DUI conviction and North Carolina board action were based upon findings related to unspecified substance abuse, the Hearing Committee has concerns regarding this issue.

The Hearing Committee feels, given the seriousness of the findings against Respondent in North Carolina and Tennessee, that the appropriate sanction to be imposed for is a one-year suspension of his medical license. The Hearing Committee feels that it has no choice but to order this suspension to protect the residents of New York State, since allowing Respondent to continue to practice despite whatever problems he may be having, which cannot be determined without further evaluation, would create unnecessary and avoidable risks.

The one-year suspension will afford the Department an opportunity to refer this matter for a full assessment of Respondent's possible psychiatric/medical/substance abuse problems. It is noted in this regard that, pursuant to Public Health Law §230(7), the Department may require a licensee to undergo a thorough medical/psychiatric examination to assess his ability to continue to practice in New York State whenever it has reason to believe that the licensee may be impaired by physical or mental ability, alcohol or drugs. The ordering of such an evaluation would be appropriate in Respondent's case, but the

assessment of Respondent's physical and mental condition is beyond the scope of the charges in this case and beyond the limited scope of a referral hearing under Public Health Law §230(10)(p).

ORDER

IT IS HEREBY ORDERED THAT:

The New York State medical license of **SARWAR MURTUZA, M.B.B.S.** is hereby suspended for a period of **ONE (1) YEAR** from the effective date of this order.

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Eggertsville, New York

29 June 2004

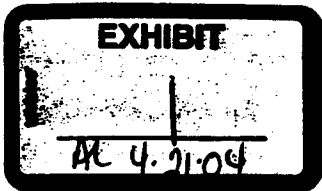


JOEL H. PAULL, D.D.S., M.D.
Chairperson

SHELDON H. PUTTERMAN, M.D.
MS. FRANCES TARLTON

APPENDIX 1

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



IN THE MATTER
OF
SARWUR MURTUZA, M.B.B.S.
CO-03-12-5362-A

NOTICE OF
REFERRAL
PROCEEDING

TO: SARWUR MURTUZA, M.B.B.S.
P.O. Box 548
Sparta, NC 28675

SARWUR MURTUZA, M.B.B.S.
402 Maple Street
Sparta, NC 28675

SARWUR MURTUZA, M.B.B.S.
302 Maple Street
Sparta, NC 28675

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 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 21st day of April 2004, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 4th Floor, Board Room, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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. You may produce evidence or sworn testimony on your behalf. Such 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. 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, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before April 12, 2004.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before April 12, 2004, and a copy of all papers must be served on the same date on the Department of Health attorney indicated 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.

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 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
March 16, 2004


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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
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

SARWUR MURTUZA, M.B.B.S.,
CO-03-12-5362-A

STATEMENT

OF

CHARGES

SARWUR MURTUZA, M.B.B.S., the Respondent, was authorized to practice medicine in New York state on August 30, 1982, by the issuance of license number 151055 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 1, 2003, the North Carolina Medical Board, (hereinafter "North Carolina Board"), by a letter (hereinafter "North Carolina Letter"), accepted the surrender of Respondent's license to practice medicine, based on being unable to practice medicine safely by reason of alcohol or other substance abuse.

B. On or about November 14, 2003, in the General Sessions Court of Carter County, Tennessee, Respondent was found guilty, based on a plea of guilty, of Driving Under the Influence, a class A misdemeanor, and sentenced to a \$350.00 fine, eleven (11) months twenty nine (29) days confinement suspended except for two (2) days credit for time served, and one (1) year actual probation during which he may not drive in Tennessee.

C. The conduct resulting in the North Carolina Medical 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 Education Law §6530(8) (being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) being convicted or committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

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

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

DATED: *March 16*, 2004
Albany, New York


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