



# 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**

November 1, 2004

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Sarwur Murtuza, M.B.B.S.  
P.O. Box 548  
Sparta, North Carolina 28675

Sarwur Murtuza, M.B.B.S.  
402 Maple Street  
Sparta, North Carolina 28675

Sarwur Murtuza, M.B.B.S.  
302 Maple Street  
Sparta, North Carolina 28675

**RE: In the Matter of Sarwar Murtuza, M.B.B.S.**

Dear Parties:

Enclosed please find the Remand Order (No. 04-103R) 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.

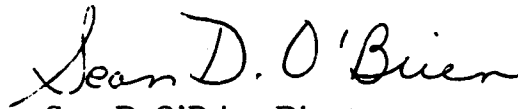
The notice of review served on the Administrative Review Board should be forwarded to:

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:cah

Enclosure

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

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

ORDER  
PURSUANT TO  
PUBLIC HEALTH  
LAW §230(7)

BPMC #04-103R

**COPY**

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. PUTTERMANN, 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.

The statement of charges upon which this proceeding was initially 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.

On June 30, 2004, the Hearing Committee rendered a decision ordering the suspension of Respondent's license for one year. The Hearing Committee also expressed concerns regarding Respondent's mental and physical status, substance and/or alcohol abuse propensities, and his ability to practice medicine safely. These questions were raised not only by the evidence as to the incidents covered by the Statement of Charges, but also by Respondent's affect and the content of his testimony at the hearing.

This decision was appealed by the Department to the Administrative Review Board (ARB), and on September 7, 2004, the ARB issued a decision vacating the suspension, and remanding this matter to the Hearing Committee for the ordering of an evaluation pursuant to Public Health Law §230(7) and a reconsideration of the appropriate penalty.

Pursuant to the ARB decision the Hearing Committee hereby orders that Respondent undergo a medical/psychiatric examination pursuant to §230(7) of the Public Health Law. Pursuant to this statute, the Hearing Committee has considered submissions from both Respondent and the Department as to the identity of the evaluator(s) and the timing of the evaluation. The Department recommended that the evaluation be conducted by the Talbott Recovery Campus of Atlanta Georgia ("Talbott"). Respondent did not suggest an alternative evaluator, so the Hearing Committee accepts the Department's recommendation that the evaluation be conducted at Talbott, which appears from the literature supplied by the Department to be an excellent choice.

In its submission, the Department recommended that the Hearing Committee order Respondent to contact Talbott within 10 days of service of this order to set up the

evaluation and that the evaluation be completed within 30 days. Respondent requested that the evaluation be delayed until the spring of 2005 because of his financial situation.

The Hearing Committee feels compelled, in general, to adopt the Department's schedule for the evaluation rather than Respondent's. The primary reason for this is that since the Hearing Committee's original determination in this matter to suspend Respondent's license for one year was overturned by the ARB, and in the absence of a stipulation between Respondent and the Department wherein the Department would agree to an extension in exchange for an agreement by Respondent that he would not practice in New York pending the evaluation, delaying the evaluation until the spring would afford the residents of New York State even less protection than they now have against any dangers Respondent's practice in this state might present. It is also noted that nothing in Respondent's submission establishes that he will be in any better position to afford to pay for the evaluation in the spring than he is now.

Accordingly, the Department's recommended timing for the evaluation is adopted, with the addition of a provision extending the 30-day limit should Talbott not be able to complete the evaluation within that time period for reasons beyond Respondent's control.

It is hereby ordered that the evaluation herein ordered will be conducted in accordance with the following criteria:

1. Respondent will undergo the 96-hour in-depth medical/psychiatric/substance abuse examination offered by the Talbott Center. The examination will assess Respondent's physical condition and psychiatric status, as well as his propensity for the improper use of controlled substances and/or abuse of alcohol. The assessment will include a recommendation as to whether Respondent can safely continue the practice of medicine in New York State at this time, and, if so, under what circumstances.
2. Respondent shall contact Talbott at (770) 994-0185 within ten days of the service of this order and arrange to have the assessment completed within 30 days of the service of this order if Talbott is able to conduct the examination within that time

frame, or as soon thereafter as Talbott is able to do so should Talbott be unable to complete the evaluation within 30 days for reasons beyond Respondent's control.

3. Respondent will, upon entering the evaluation program, execute and keep effective any releases necessary to have the results of the evaluation forwarded upon completion to the Hearing Committee, the Administrative Law Judge and the parties.
4. If Respondent is not satisfied with the choice of Hearing Committee as to the assessing program, Respondent must still undergo the evaluation as directed, but may, pursuant to §230(7) of the Public Health Law, obtain an independent evaluation by another qualified assessor and provide the results under the same terms as set forth above.
5. All costs associated with the assessment ordered herein shall be borne by Respondent.

Pursuant to N.Y. Education Law §6530(15), failure to comply with this Order, including cooperation with all aspects of the evaluation directed, is professional misconduct.

**DATED: Eggertsville, New York**  
*October 29, 2004*

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

**SHELDON H. PUTTERMANN, M.D.**  
**MS. FRANCES TARLTON**

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

EXHIBIT

APR 4. 21. 04

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

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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 21<sup>st</sup> day of April 2004, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 4<sup>th</sup> 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, 5<sup>th</sup> 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

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

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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