



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

April 30, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jesse Blane Munoz, M.D.
a/k/a Jessie Munoz, M.D.
255 Trumbull Road
Apt. PH
Manhasset, NY 11030

Jesse Blane Munoz, M.D.
a/k/a/ Jessie Munoz, M.D.
40-25 74th Street
Elmhurst, NY 11373

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – 4th Floor
Troy, NY 12180

Anthony Z. Scher, Esq.
Wood & Scher
14 Harwood Court
Scarsdale, NY 10583

**RE: In the Matter of Jesse Blane Munoz, M.D.
a/k/a Jessie Munoz, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-125) 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, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER

OF

JESSE BLANE MUNOZ, M.D., AKA JESSIE MUNOZ,
M.D.

DETERMINATION

AND

ORDER

BPMC-02-125

A hearing was held on April 17, 2002, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Hearing and a Statement of Charges, both dated December 26, 2001, were served upon the Respondent, **Jesse Blane Munoz, M.D., a/k/a Jessie Munoz, M.D. Peter B. Kane, M.D.**, Chairperson, **Ernst A. Kopp, M.D.**, and **Mr. John D. Tarrant**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner 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 and was represented by **Anthony Z. Scher, Esq.**, Wood & Scher, 14 Harwood Court, Scarsdale, New York 10583.

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 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 Section 6530(9)(a)(i). Copies of the Commissioner's Order and Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Jesse Blane Munoz, 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. Jesse Blane Munoz, M.D., the Respondent, was authorized to practice medicine in New York State on June 17, 1983, by the issuance of license number 154430 by the New York State Education Department (Petitioner's Ex. 4).

2. On May 18, 2001, in the Supreme Court of the State of New York, New York County, Criminal Term, the Respondent was convicted, based on a plea of guilty, of Grand Larceny in the Fourth Degree, a class E felony (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

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

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted of one count of Grand Larceny in the Fourth Degree. The Respondent admitted that he committed this crime, but argued that there were mitigating circumstances that should be taken into account when this Hearing Committee determines the penalty to be imposed.

The Respondent testified that he was the owner of VIP Medical Associates, a diagnostic and treatment facility licensed by New York State. VIP lost its lease and, in February of 1999, temporarily ceased doing business. In May of 1999, the Respondent reopened VIP at a new location, in space occupied by the Manhattan Women's Center. The Respondent testified that the plan was for VIP and Manhattan Women's Center to operate together for a few months and, if this proved agreeable to both parties, to merge. During the months from May of 1999 through December of 1999, VIP, under the Respondent's supervision, submitted bills to the New York State Medicaid Program for services rendered at the new location. The bills stated that the services were rendered at the old location. The Respondent testified that in December of 1999, he received a telephone call from someone at the New York State Department of Health. During this telephone call, he was informed that VIP's license was not transportable, that is, VIP was

legally authorized to provide medical services at the old location only. The Respondent testified that prior to this telephone call, he had been unaware that VIP's legal authority to provide medical services was limited to the old location. He testified that, because he was the sole owner of VIP, he had believed he was able to move VIP to a new location without losing licensure.

The Respondent testified that he was indicted for the May 1999 through December 1999 Medicaid billings, the reason for the charges being the inaccurate information on the billing forms about where the services had been rendered. The Respondent testified that this inaccurate information made him guilty of Grand Larceny in the Fourth Degree, but contended that he had not realized at the time that he submitted the billings that he was doing anything wrong or illegal.

Although the Respondent presented this argument as an argument in mitigation, not a denial of guilt, in reality it is a denial of guilt. Under New York State Penal Law Section 155.05, a person commits larceny only "when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof." Because the crime of Grand Larceny in the Fourth Degree does not occur unless there is an intent to deprive another of property, the Respondent's claim that he made an honest mistake is a denial that he committed the crime. Under New York State Public Health Law Section 230(10)(p), the Hearing Committee is precluded from considering whether or not the Respondent is guilty of the crime. Pursuant to this statute, the Hearing Committee must accept the conviction as conclusive proof that the Respondent committed the crime.

The Respondent also argued that he has had an exemplary medical career and that this should be taken into account in determining the penalty. The problem with this

argument is that it is based solely on the testimony of the Respondent. There was no corroborating evidence from any other person.

There are some factors in the Respondent's favor, factors sufficient to persuade the hearing Committee that it is unnecessary to revoke the Respondent's license to practice medicine. One is that, unlike the situation in many Medicaid fraud cases, the services at issue were actually rendered. Also, there is no evidence that the quality of medical services provided by the Respondent have been deficient in any way. The Respondent has been prohibited since December of 2001 from practicing medicine by the Commissioner's Order and Notice of Hearing, mentioned above. This is a lengthy enough period of time for the Respondent to be legally barred from practicing medicine, given the nature of his crime and the factors in his favor. The Order, below, imposes a penalty sufficient to protect the people of New York State.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is suspended for five years. The suspension is stayed and will remain stayed as long as the Respondent complies with the terms of probation, (paragraphs 4 through 8, below), and pays in a timely manner the fine described in paragraph 2, below.

2. A fine of \$2,500.00 is assessed. The fine shall be paid in full within 90 days of the effective date of this Order. Payment shall be made to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower, Room 1258, Albany, New York 12237. If the fine is not paid by the required date, all provisions of law relating to debt collection in New York State shall apply. This includes but is not limited to the imposition of interest, late payment charges and

collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses.

3. The Respondent is placed on probation for five years.

4. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. If the Respondent commits professional misconduct as enumerated in New York State Education Law Sections 6530 or 6531, those acts shall be deemed to be a violation of probation and an action may be taken by the Office of Professional Medical Conduct ("OPMC") against the Respondent's license pursuant to New York State Public Health Law Section 230(19).

5. No later than 30 days after the effective date of this Order, the Respondent shall submit written notification to the New York State Department of Health, Office of Professional Medical Conduct, 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 pending investigations, charges, criminal proceedings or disciplinary actions by any local, state or federal agency, institution or facility. The description of employment must be sufficiently detailed to allow OPMC to determine the legality of the nature of the employment and the financial arrangements related to the employment. Changes in employment, medical practice, address or telephone number must be reported within 30 days of the change. New investigations, charges, criminal proceedings and disciplinary actions must be reported within 30 days of the date that the Respondent is notified of the existence of the investigation, charges, criminal proceedings or disciplinary actions.

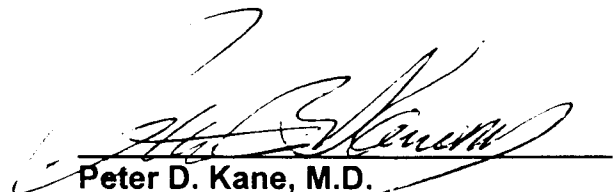
6. The Respondent shall perform 150 hours of public service within one year of the effective date of this Order. The public service shall consist of obstetrical and gynecological services to be provided at a hospital or a clinic serving a primarily indigent population. The location for the performance of the public service shall be chosen by the Respondent and approved by OPMC.

7. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order. The Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

8. The Respondent shall comply with all terms and conditions to which he is subject pursuant to this 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 the Respondent as may be authorized pursuant to the law.

9. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Cazenovia, New York
4/26/02, 2002


Peter D. Kane, M.D.
Chairperson

Ernst A. Kopp, M.D.
John D. Tarrant

APPENDIX I

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



IN THE MATTER
OF
JESSE BLANE MUNOZ, M.D., AKA JESSIE MUNOZ, M.D.
CO-01-05-2501-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: JESSE BLANE MUNOZ, M.D., AKA JESSIE MUNOZ, M.D.
255 Trumbull Road
Apt. PH
Manhasset, NY 11030

JESSE BLANE MUNOZ, M.D. AKA JESSIE MUNOZ, M.D.
40-25 74th Street
Elmhurst, NY 11373

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that JESSE BLANE MUNOZ, M.D., AKA JESSIE MUNOZ, M.D. has pleaded guilty to committing acts constituting a felony under New York State law in the Supreme Court of the State of New York, New York County, Criminal Term, New York. JESSE BLANE MUNOZ, M.D., AKA JESSIE MUNOZ, M.D. was authorized to practice medicine in New York State on June 17, 1983, by the issuance of license number 154430 by the New York State Education Department.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately JESSE BLANE MUNOZ, M.D., AKA JESSIE MUNOZ, M.D., Respondent, shall not practice medicine in the State of New York. This order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public 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 of Professional Medical Conduct, on the 21st day of February, 2002 at 10:00 am in the forenoon at Hedley Park Place, 5th Floor, 433 River Street, Troy, New York and at such other adjourned dates, times, and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction 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 MAY BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE**

**URGED TO OBTAIN AN ATTORNEY FOR THIS
MATTER.**

DATED: Albany, New York

December 26, 2001

ANTONIA C. NOVELLO, M.D. M.P.H, Dr. P.H.,
Commissioner



BY: DENNIS P. WHALEN
Executive Deputy Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
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	STATEMENT
OF	OF
JESSE BLANE MUNOZ, M.D., AKA JESSIE MUNOZ, M.D. CO-01-05-0501-A	CHARGES

JESSE BLANE MUNOZ, M.D., AKA JESSIE MUNOZ, M.D., the Respondent, was authorized to practice medicine in New York state on June 17, 1983, by the issuance of license number 154430 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about May 18, 2001, in the Supreme Court of the State of New York, New York County, Criminal Term, New York, the Respondent was convicted, based on a plea of guilty, of Grand Larceny in the Fourth Degree (Penal Law §155.30, a class E felony).

SPECIFICATION

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

1. The facts in paragraph A.

DATED: *Dec 26*, 2001
Albany, New York


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