



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

December 2, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard J. Zahnleuter, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Ralph A. Erbaio, Jr.
Lifshutz, Polland & Hoffman, P.C.
675 Third Avenue
New York, New York 10017

Tsedaye Bezabeh, M.D.
1703 East West Highway
#321
Silver Springs, Maryland 20910

RE: In the Matter of Tsedaye Bezabeh, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-360) 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.

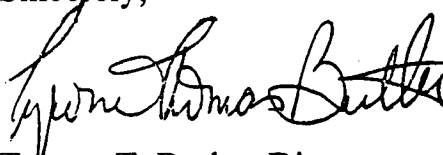
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

IN THE MATTER
OF
TSEDAYE BEZABEH, M.D.

DETERMINATION
AND
ORDER

BPMC #02-360

COPY

A "Commissioner's Order and Notice of Hearing" and a Statement of Charges, both dated September 13, 2002, were served upon the Respondent, **TSEDAYE BEZABEH, M.D.** **ERNST A KOPP, M.D.**, Chairperson, **THAKOR C. RANA, M.D.** and **MS. VIRGINIA R. MARTY**, 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 November 21, 2002, 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 **RICHARD J. ZAHNLEUTER, ESQ.** and **ROBERT BOGAN, ESQ.**. The Respondent appeared in person and by **RALPH A. ERBAIO, JR., 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.

STATEMENT OF CASE

This case was brought in part 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 which 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) based upon her conviction of a crime under New York State law.

This case was also brought pursuant to Education Law Section 6530(12)(b), which, among other things, authorizes the Commissioner to issue a summary suspension prohibiting a physician from practicing medicine pending a hearing when the physician has been convicted of a felony under New York law.

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:

Tseyaye Bezabeh, M.D.
Paul M. Kelliher, M.D (by telephone)
Ehab Elemam, M.D. (by telephone)

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 unless otherwise specified.

1. **TSEDAYE BEZABEH, M.D.**, the Respondent, was authorized to practice medicine in New York State on May 5, 1998, by the issuance of license number 210226 by the New York State Education Department (Ex. 4).
2. On April 10, 2002, Respondent was convicted, by a plea of guilty, of one count of Insurance Fraud in the Fourth Degree, a felony, in the Supreme Court, Queens County (Ex. 7). Respondent was sentenced to a three-year conditional discharge and payment of a mandatory surcharge.

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent's conviction of a crime constitutes misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(i).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of a crime under New York State Law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

Pursuant to Public Health Law Section 230(10)(p), when a licensee has violated Education Law §6530(9) (conviction of a crime or administrative violations), and a hearing has been scheduled to address the issue of professional misconduct, the evidence and testimony are strictly limited to a determination of the penalty to be imposed.

In this case, Respondent was convicted of the felony of Insurance Fraud in the Fourth Degree, which triggered the Commissioner's Order referred to above and the scheduling of this hearing to assess the penalty to be imposed with regard to her professional misconduct.

At the hearing, the Department urged the Hearing Committee to revoke Respondent's license. The essence of the Department's position in this regard was, apparently, that the crime of which Respondent was convicted was a felony and that revocation is the appropriate penalty for a felony conviction. The Department contended that the appropriateness of revocation is evidenced by the number of professions for which a felony conviction bars the licensee from practicing the profession altogether, and by the number of previous professional medical misconduct cases where revocation was imposed because of a felony conviction.

One difficulty with this position is that the absence of a statutorily mandated license ineligibility provision for physicians is, contrary to the Department's position, evidence that the Legislature intended that physicians who commit felonies should not be automatically barred from practicing, and that their cases should be adjudged individually, based upon the factors which ordinarily go into determining the level of penalty to be imposed. The fact that revocation has been imposed in other cases where physicians have been convicted of felonies is of no import in this case, because each misconduct case must be assessed on its own particular set of circumstances.

The Hearing Committee determines that in this case, although a significant penalty is called for, revocation is not the appropriate penalty. The primary bases for this conclusion are that this conviction is, as far as this record reveals, the only blot on Respondent's record, that the offense was a class E felony (the least serious level of felony), and that it involved the writing of only one false medical report, which was filed with an insurance company. The Hearing Committee believes that Respondent should not be barred from the practice of medicine altogether as a result of one mistake in judgement. Respondent expressed remorse at the hearing for her involvement in the incident that led to the conviction, and the Hearing Committee accepts Respondent's testimony that, if given a chance to continue to practice medicine, she would not engage in such conduct in the future.

On the other hand, the commission of a felony is a serious act, and the Hearing Committee believes that a significant penalty should be imposed as punishment and deterrent to future misconduct. The penalty that the Hearing Committee feels is most commensurate with the act of misconduct committed is an actual 6 month suspension of Respondent's license (to run from the date her license was suspended pursuant to the

Commissioner's Order), a \$5,000 fine (this portion of the penalty was assessed by a 2-1 vote of the Hearing Committee), and three year period of probation, the details of which are set forth in the attached Order. The most significant provision of the terms of probation is a requirement that Respondent practice only in a hospital or nursing home setting during the period of probation. The Hearing Committee hopes that Respondent's performance, recordkeeping and billing documentation will be subject to more careful scrutiny in such a setting, and that such scrutiny will add further protection against a repeat of conduct of the type at issue in this case.

The Hearing Committee found, other than Respondent's acceptance of responsibility for the acts leading to the conviction and remorse for its occurrence, little evidence that would mitigate against the imposition of these sanctions. The Hearing Committee found the testimony of Respondent's supporting witnesses, Dr. Eleman and Dr. Kelliher (both of whom were medical residents with her and maintain only social relationships with her currently), to be too remote from her current situation to be of much value in determining the penalty to be imposed.

ORDER

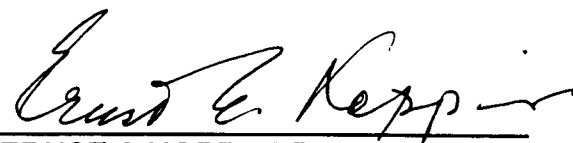
IT IS HEREBY ORDERED THAT:

1. The medical license of **TSEDAYE BEZABEH, M.D.** is hereby **SUSPENDED** for a period of **SIX (6) MONTHS**, to run from the effective date of the Commissioner's Order summarily suspending her license.
2. A fine in the amount of Five Thousand Dollars (\$5,000.00) is assessed against the Respondent. Payment of the fine shall be due within 60 days of the effective date of this Order. The Respondent shall make payment to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York, 12237. Any fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest; late payment charges and collection fees; referral to the New York Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).
3. The Respondent's medical license is hereby placed on **PROBATION** for a period of **THREE (3) YEARS**, to commence on the effective date of this decision. The terms of probation are as follows:
 - A). Respondent shall practice only in a nursing home or hospital during the period of her probation.
 - B). Respondent shall submit written descriptive notification to OPMC of any changes in employment and practice, professional and residential addresses or 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 during the probationary period, within 30 days of each event;

- C). If Respondent ceases to be 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, she shall notify the Director of New York State Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street, Troy, New York 12180-2299. The probation shall be tolled during any period when she is not practicing in New York and shall resume upon her return to practice in New York State.
- D). Respondent shall notify in writing any medical facility with whom she becomes affiliated or at which she practices during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.
- E). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which she is affiliated or at which she practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired Respondents. 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.
- F). 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. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- G). Respondent shall comply with all terms, conditions, and restrictions to which she is subject pursuant to the Order and shall assume and bear all costs related to compliance.
- H). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.

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: Loudonville, New York
Nov 29, 2002



ERNST A KOPP, M.D.
Chairperson

THAKOR C. RANA, M.D.
MS. VIRGINIA R. MARTY

APPENDIX 1

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

IN THE MATTER
OF
TSEDAYE BEZABEH, M.D.
FR-01-12-6108-B

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: TSEDAYE BEZABEH, M.D.
1703 East West Highway
#321
Silver Springs, MD 20910

Peter L. Wolk, Esq.
Schuman Abramson Morak & Wolk
35 Worth Street
New York, NY 10013

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 TSEDAYE BEZABEH, M.D., has been found guilty of committing acts constituting a felony under New York State law in the Supreme Court of the State of New York, County of Queens, Criminal Term.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately TSEDAYE BEZABEH, M.D., Respondent, (license number 210226), shall not practice medicine in the State of New York or in any other jurisdiction where that practice of medicine is predicated on a valid New York State license to practice medicine. 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 November, 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, that 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 her behalf, to issue or have subpoenas issued on her behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against her. 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, at least five days prior to the scheduled hearing

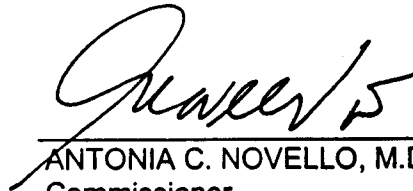
date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

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

September 13, 2002


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

or

Richard Zahnleuter
Associate Counsel
Bureau of Professional Medical Conduct
2512 Corning Tower
Empire State Plaza
Albany, NY 12237
(518) 486-1841

IN THE MATTER
OF
TSEDAYE BEZABEH, M.D.
FR-01-12-6108-B

STATEMENT
OF
CHARGES

TSEDAYE BEZABEH, M.D., the Respondent, was authorized to practice medicine as a Physician in New York State on May 5, 1998, by the issuance of license number 210226 by the New York State Education Department.

FACTUAL ALLEGATIONS

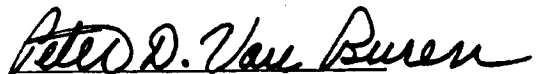
A. On or about April 10, 2002, in the Supreme Court of the State of New York, County of Queens, Criminal Term, Respondent was found guilty, based on a plea of guilty, of Insurance Fraud in the Fourth Degree, a class E felony, and was sentenced to a three (3) year conditional discharge and a mandatory surcharge.

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: *Sept. 13*, 2002
Albany, New York


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