



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

February 11, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eleanora Zharov, M.D.
7133 Peri Lane
Brooklyn, New York 11234

Eleanora Zharov, M.D.
Prompt Comprehensive Medical, P.C.
63-116 Woodhaven Boulevard
Rego Park, New York 11374

T. Lawrence Tabak, Esq.
Augustine, Kern, Schoppman, P.C.
4320 Lakeville Road
Lake Success, New York 11042

Robert Bogan, Esq.
NYS Department of Health
Office of Professional
Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

Richard Zahnleuter, Esq.
NYS Department of Health
Bureau of Professional
Medical Conduct
2512 Corning Tower
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Eleanora Zharov, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-038) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

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.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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 "Tyrone T. Butler". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC NO. 03-38

IN THE MATTER

OF

ELEANORA ZHAROV, M.D.

A hearing was held on January 23, 2003, 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 September 13, 2002, were served upon the Respondent, **Eleanora Zharov, M.D.** **Hrusikesh Parida, M.D.**, Chairperson, **Eleanor Kane, M.D.**, and **William McCafferty, Esq.**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Richard Zahnleuter, Esq.**, and **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by **T. Lawrence Tabek, Esq.**, of Augustine, Kern, Schoppman, 420 Lakeville Road, Lake Success, New York 11042.

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:

Eleonora Zharov, M.D.
Oleg Gutnik, M.D.
Regina Shed
Mark Karilovsky

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. Eleanora Zharov, M.D., the Respondent, was authorized to practice medicine in New York State on January 8, 1993, by the issuance of license number 191209 by the New York State Education Department (Petitioner's Ex. 14[a]).

2. On April 10, 2002, in the Supreme Court of the State of New York, County of Queens, Criminal Term ("the Court"), the 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 year conditional discharge and a mandatory surcharge (Petitioner's Ex. 15, 16 and 17).

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 pled guilty to and was convicted of one count of Insurance Fraud in the Fourth Degree, a class E felony. The criminal act was the submission of a report to an insurance company that exaggerated or embellished the injuries of the insured person so that the insured person would receive greater benefits than those to which he was entitled.

The Respondent requested that this Hearing Committee not impose a penalty that would prevent her from practicing medicine, notwithstanding the fact that she had been convicted of a felony. The Respondent argued that although the crime was a felony, this should not lead to revocation or suspension of her license because it was a class E felony, the least serious felony category. The Respondent noted that the Court sentenced her to a conditional discharge, which the Respondent characterized as a

lenient sentence proving that the Court believed that the Respondent was not a threat to the public. The Respondent also presented evidence to prove that she provided excellent medical care and that she had never been involved in any other criminal proceedings or medical malpractice dispute. She testified that she took full responsibility for her crime and that she would never commit such a crime again.

The Respondent's argument about a class E felony being the least serious category of felony will be addressed first. What the Respondent argued is true but of very little importance. The reason is that all felonies are very serious. Crimes of relatively minor importance are called misdemeanors.

The next point to be addressed is the greatest problem with the Respondent's case. Although the Respondent stated repeatedly in her testimony that she accepted full responsibility for her crime, this, in fact, is not true. The Respondent took the position that she did not write the insurance report, did not review it carefully before she signed it, and did not know at the time that she signed it that it contained false information. In other words, she claimed in her testimony that she signed a false report because of carelessness rather than an intention to defraud. An element of insurance fraud, however, is that the person who prepares or submits the false document to the insurance company does so "knowingly and with intent to defraud..." (Penal Law Section 176.05[1]). A person who carelessly signs a document without knowing that it contains false information does not do so knowingly and with intent to defraud.

As stated above, Public Health Law Section 230(10)(p) strictly limits the issues that can be considered in this hearing. An issue that cannot be entertained is whether the Respondent committed the crime of which she was convicted. The Hearing Committee must accept the Court's conviction, and this requirement applies to every element of the

crime, including acting knowingly and with intent to defraud. Therefore, the Hearing Committee rejects the Respondent's claim that her crime was the result of carelessness.

The Hearing Committee also rejects the argument that the Court's sentence of a conditional discharge should have an influence on the penalty to be imposed in the present proceeding. In the plea hearing in the criminal proceeding, the Respondent stated that she "prepared a consultation report for patient, [J. T.], which embellished the injuries of this patient and forwarded it to the insurance company." (Petitioner's Ex. 16, p. 8). This bears no resemblance to what she testified to in the present hearing, that she carelessly signed a report prepared by someone else and did not know about the false information in the report. If she had said this at the plea hearing, there would have been no conditional discharge sentence. The reason for this is that the Court would not have accepted the Respondent's guilty plea. When a defendant attempting to plead guilty denies to the Court that an element of the crime was committed, the Court must reject the guilty plea and schedule the case for trial. This Hearing Committee is not influenced by a sentence that would not have been imposed had the Respondent said in Court what the Respondent said in this hearing.

In order for the Hearing Committee to conclude that a convicted physician truly regrets her crime and will never commit the crime again, the physician has to refrain from claiming that she did not commit one of the elements of the crime. It is totally unconvincing to state, in effect, that she did not do it and will never do it again. In general, the Hearing Committee did not find the Respondent to be a frank and credible witness and considered much of her testimony to be false or evasive. For instance, the Respondent testified that she did not know the name of any person who worked at the management company that handled all the business dealings of her medical practice. The Hearing Committee was also troubled by the Respondent's vague, evasive and

nonresponsive answers on cross-examination regarding her role in the preparation and submission of the insurance report.

In a case concerning a felony conviction, for the Hearing Committee to impose a minor sanction because of evidence concerning excellent medical care provided by the Respondent or any other positive evidence about the Respondent, the Respondent must testify openly and honestly about her crime and all other subjects addressed in her testimony. The Respondent did not do this. The Petitioner recommended a revocation of the Respondent's license and a \$10,000.00 civil penalty. The revocation will be imposed. The seriousness of a revocation makes a civil penalty unnecessary.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is revoked.
2. 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: Middletown, New York
February 5, 2003

Hrusikesh Parida

Hrusikesh Parida, M.D.
Chairperson

Eleanor Kane, M.D.
William McCafferty, Esq.

APPENDIX 1

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

IN THE MATTER
OF
ELEONORA ZHAROV, M.D.
FR-01-12-6108-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: ELEONORA ZHAROV, M.D.
7133 Peri Lane
Brooklyn, NY 11234

ELEONORA ZHAROV, M.D.
Prompt Comprehensive Medical, P.C.
63-118 Woodhaven Blvd.
Rego Park, NY 11374

T. Lawrence Tabak, Esq.
Augustine, Kern, Schoppman, P.C.
420 Lakeville Road
Lake Success, NY 11042

Gregory J. Naclerio, Esq.
Ruskin Moscou Faltischek, P.C.
East Tower 15th Floor
190 EAB Plaza
Uniondale, NY 11556-0190

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 ELEONORA ZHAROV, 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 ELEONORA ZHAROV, M.D., Respondent, (license number 191209), 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,

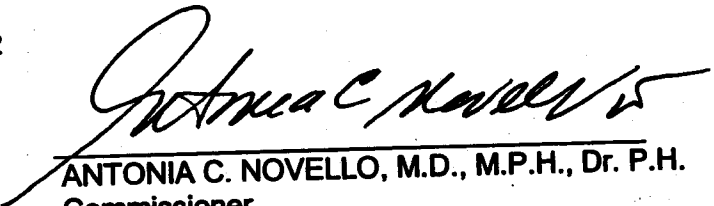
Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

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
ELEONORA ZHAROV, M.D.
FR-01-12-6108-A

STATEMENT
OF
CHARGES

ELEONORA ZHAROV, M.D., the Respondent, was authorized to practice medicine as a Physician in New York State on January 8, 1993, by the issuance of license number 191209 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
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct