



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

May 21, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Mahar, Esq.
NYS Department of Health
433 River Street - Suite 303
Troy, New York 12180

Azhar Tahir, M.D.
REDACTED

Azhar Tahir, M.D.
7434 Route 54
Bath, New York 14810

RE: In the Matter of Azhar Tahir, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-112) 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,

REDACTED

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
AZHAR TAHIR, M.D.

DETERMINATION
AND
ORDER

BPNC #04-112

COPY

A Commissioner's Order and Notice of Referral Hearing, dated February 5, 2004, and a Statement of Charges, dated the same date, were served upon the Respondent, **AZHAR TAHIR, M.D.** **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 and by **CAROLYN SHEARER, 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 pursuant to Public Health Law Sections 230(12)(b) and 230(10)(p).

The first cited statute provides, among other things, that when the licensee has been convicted of a felony under New York law, including by guilty plea, the commissioner, after recommendation by a committee of professional misconduct, may order the licensee to discontinue or refrain from the practice of medicine in whole or in part or to take other actions immediately, pending a hearing.

The latter 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 Commissioner issued a summary order prohibiting Respondent from practicing medicine in New York, based upon his conviction of a felony under New York law. In addition, Respondent is charged pursuant to Public Health Law §230(10)(p) with professional misconduct pursuant to Education Law Sections 6530(9)(a)(i) [erroneously referred to as subdivision (9)(i) in the Statement of Charges], based upon the felony conviction. Copies of the Commissioner's Order, the Notice of Referral Proceeding and the Statement of Charges are 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. **AZHAR TAHIR, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 30, 1992, by the issuance of license number 190786 by the New York State Education Department (Ex. 4).
2. On July 23, 2003, Respondent pled guilty to the crimes of Grand Larceny in the Third Degree, a class D felony, and Scheme to Defraud in the First Degree, a class E felony, in the State of New York, County Court, County of Steuben. He was sentenced to 5 years' probation, 6 months of home confinement, and the performance of community service. Respondent also agreed, pursuant to the plea agreement that led to the guilty plea, to make \$651,723.00 in restitution to the Deputy Attorney General's restitution fund (Ex. 5).
3. The felony complaint and Superior court Information in the criminal case against Respondent alleged, in substance, that Respondent had, with intent to defraud the Medicaid and Medicare programs, the State Insurance Fund (Worker's Compensation)

and the Excellus Health Plan, Inc., of funds to which he was not entitled, upgraded "upwards of 90% of his claims" to these entities by falsely representing that he had provided comprehensive office visits and vital capacity tests to patients, when either lesser or no services were provided (Ex. 5). In his plea agreement, Respondent stated that:

From on or about January 1, 1998 to March 11, 2003 ... as a part of a single sustained criminal impulse and in execution of a general fraudulent scheme constituting a systematic ongoing course of conduct with intent to defraud the New York State Medicaid program, the Medicare program, Excellus Health Plan, Inc. and the New York State Insurance Fund, I submitted and caused to be submitted to the above programs and insurers, claims which contained false and fraudulent pretenses and representations concerning medical services that I allegedly provided, (sic) I submitted (a) claims for comprehensive office visits when in fact lesser paying services were performed, (b) claims for vital capacity tests when non-reimbursable peak flow meter tests was [sic] actually performed, claims for patients for which I did not provide treatment, and claims for workmen's compensation for treatment unrelated to the patients' work related accident or injury. As I intended, in reliance upon my false representations the State of New York, the Medicare Program, Excellus Health Plan, Inc., and the New York State Insurance Fund paid me approximately \$98,850, \$119,000, \$388,384 and \$45,489 respectively, to which I was not entitled. (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent's criminal convictions constitute 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 crimes under the laws of New York State.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent was convicted of two felonies under New York law relating to fraudulent billing for his medical services. These convictions constitute misconduct per se under New York Education Law §6530(9)(a)(i). Accordingly, the only issue remaining to be addressed is the penalty to be imposed for this misconduct.

It is noted at the outset that Respondent denied, on examination by the Hearing Committee, having billed for services for patients he did not see, or having had any intentional involvement in the other billing irregularities. He characterized these billing irregularities as "mistakes" made by his wife, who did the billing.

These assertions are inconsistent with the language of the criminal statutes under which Respondent was convicted¹, with the language in the plea agreement he signed, and with the answers he gave at the entry of his guilty pleas (Ex. 6). Accordingly, the Hearing Committee cannot consider these claims, because the criminal convictions, based on the language of the criminal statutes violated, are binding on it pursuant to Public Health Law §230(10)(p).

The Hearing Committee has determined, after considering the full spectrum of penalties available under Public Health Law §230-a, that a censure and reprimand and 10 years' probation are the appropriate penalties. The Hearing Committee concludes that license revocation or suspension should be avoided, given the extensive support Respondent has in his community and the apparently valuable services he provides (see Ex. B). The Hearing Committee believes also that Respondent has already received

¹ The definition of Scheme to Defraud in the First Degree (Penal Law §190.65), for example, involves "intent to defraud".

considerable punishment for the acts that led to the criminal convictions, and that there is little likelihood that he would repeat such acts. The 10-year period of probation will serve as an enduring reminder of Respondent's legal and ethical obligations, and the terms of probation, set forth in the attached order, are designed to ensure that Respondent fulfills all his obligations to the criminal justice system and to provide him with necessary educational experiences.

ORDER

IT IS HEREBY ORDERED THAT:

1. A **CENSURE AND REPRIMAND** are hereby issued against the New York State medical license of **AZHAR TAHIR, M.D.**
2. Respondent shall serve a term of **PROBATION** of **TEN (10) YEARS**.
3. The terms of Respondent's probation are as follows:
 - A. 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.
 - B. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), 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 investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
 - C. During the term of his probation, Respondent shall practice only in an underserved area. Any practice Respondent proposes to engage in is subject to approval by the Director of OPMC for compliance with this requirement, and Respondent must notify the Director prior to engaging in such practice.
 - D. Respondent shall fully and timely comply with all the terms of his criminal probation and with the restitution requirements in his plea agreement. Respondent shall provide a copy of this Decision and Order to his probation officer and to the Attorney General's Restitution Fund office, and provide OPMC with written verification thereof.
 - E. During the first year of his probation, Respondent shall complete continuing medical education courses in medical ethics, and billing and/or business management practices. Respondent shall obtain approval for any such courses from OPMC prior to registering therefor.
 - F. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his 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.

- G. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if he is not currently 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. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
- H. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
- I. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

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

DATED: Eggertsville, New York

May 19, 2004

REDACTED

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

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

APPENDIX 1

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

EXHIBIT

AL 4-27-04

IN THE MATTER
OF
AZHAR TAHIR, M.D.
CO-03-07-3383-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: AZHAR TAHIR, M.D.
REDACTED

AZHAR TAHIR, M.D.
7434 Route 54
Bath, NY 14810

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 AZHAR TAHIR, M.D., Respondent, licensed to practice medicine in New York state on October 30, 1992, by license number 190786, has been found guilty, based on a plea of guilty, of committing acts constituting felonies under New York law, in the County Court of the State of New York, Steuben County, New York.

It is therefore, .

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, AZHAR TAHIR, M.D., Respondent, shall not practice medicine in the state of New York or in any other jurisdiction where that practice is dependent 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 17th day of March, 2004, at 10:00 am in the forenoon at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180. 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 his behalf and to issue or have subpoenas issued on his behalf for the production of witnesses and documents. 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. Respondent has the right 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 adjournment requests are, therefore, 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

February 5, 2004

REDACTED

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

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

AZHAR TAHIR, M.D.
CO-03-07-3383-A

STATEMENT

OF

CHARGES

AZHAR TAHIR, M.D., the Respondent, was authorized to practice medicine in New York state on October 30, 1992, by the issuance of license number 190786 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 23, 2003, in County Court of the State of New York, Steuben County, New York, Respondent was found guilty, based on a plea of guilty, of Grand larceny in the third degree, in violation of New York Penal Law, Section 155.35(1), a class D felony, and Scheme to defraud in the first degree, in violation of New York Penal Law, Section 190.65(1), a class E felony, and on or about October 7, 2003, was sentenced to five (5) years probation, six (6) months home confinement, and community service.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: February 5, 2003
Albany, New York

REDACTED

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

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

PUBLIC

IN THE MATTER
OF
AZHAR TAHIR, M.D.
CO-03-07-3383-A

COMMISSIONER'S
ORDER
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TO: AZHAR TAHIR, M.D.
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MATTER.**

DATED: Albany, New York

February 5, 2004

REDACTED

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

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

AZHAR TAHIR, M.D.
CO-03-07-3383-A

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1. The facts in Paragraph A.

DATED: *February 5*, 2003
Albany, New York

REDACTED

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