



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

June 14, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Andre Benony Celestin, M.D.
2348 Dutch Broadway
Elmont, New York 11003

Andre Benony Celestin, M.D.
Katmar Medical Center
205 Clankron Avenue
Brooklyn, New York 11226

Nathan L. Dembin, Esq.
Nathan L. Dembin & Associates
225 Broadway – Suite 1400
New York, New York 10007

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – 4th Floor
Troy, New York 12180

RE: In the Matter of Andre Benony Celestin, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-119) 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.

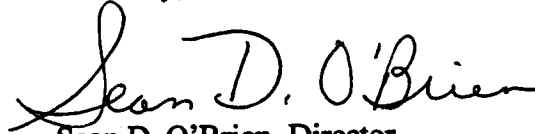
The notice of review served on the Administrative Review Board should be forwarded to:

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". The signature is written in black ink and is positioned above the printed name and title.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

IN THE MATTER
OF
ANDRE BENONY CELESTIN, M.D.

DETERMINATION

AND

ORDER

BPMC #05-119

A hearing was held on May 26, 2005, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Hearing, dated March 10, 2005, and a Statement of Charges, also dated March 10, 2005, were served upon the Respondent, **Andre Benony Celestin, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Fred S. Levinson, M.D.**, Chairperson, **Diane M. Sixsmith, 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. **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.**, of Counsel. The Respondent appeared in person and was represented by **Nathan L. Dembin, Esq.**, Nathan L. Dembin & Associates, 225 Broadway, Suite 1400, New York, New York 10007.

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)(ii). A copy of the Commissioner's Order and Notice of Hearing and a copy of the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Andre Benony Celestin, 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. Andre Benony Celestin, M.D., the Respondent, was authorized to practice medicine in New York State on November 15, 1995, by the issuance of license number 164742 by the New York State Education Department (Petitioner's Ex. 4).

2. On June 15, 2004, in the United States District Court, Southern District of New York, the Respondent was sentenced to three years probation, including six months house arrest, a \$6,000.00 fine and a \$100.00 assessment, after having been convicted of Solicitation and Receipt of Medicare Kickbacks, in violation of 42 U.S.C. Section 1320a-7(b)(1)(A) (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

This professional medical conduct proceeding was commenced by a Commissioner's Order and Notice of Hearing dated March 10, 2005. This Commissioner's Order imposed an immediate suspension of the Respondent's license to practice medicine in New York State. The reason for the Commissioner's Order was the Respondent's conviction of a felony, the solicitation and receipt of kickbacks for referring Medicare patients to another physician.

On multiple occasions over a period of approximately six years, the Respondent accepted payments from a gastroenterologist in return for referring Medicare patients to the gastroenterologist. This criminal activity was the basis for the Respondent's conviction. The Petitioner contended that this criminal activity merited a revocation of the Respondent's license to practice medicine. The Petitioner argued that if the Hearing Committee were unwilling to impose a revocation, then an adequate penalty would be a censure and reprimand, a \$10,000.00 fine, a three-month suspension of the

Respondent's license and two to three years of probation. The Hearing Committee disagrees with the Petitioner regarding the penalty that should be imposed.

The Hearing Committee does understand that the Respondent's crime was serious and that it occurred on several occasions. The Hearing Committee is also troubled by what we perceive as less than frank testimony by the Respondent on the reason he accepted the kickbacks and the timing of the payments. On the other hand, the hearing record contains several factors in the Respondent's favor. The Respondent has never had any other problems with law enforcement, professional disciplinary proceedings or malpractice claims. We are impressed with the Respondent's history of providing good medical care to poor and underserved populations and we do not want to deprive these patients of his medical services. We are also convinced that the Respondent is not a likely candidate to repeat his criminal behavior. He has learned a painful lesson from the criminal process.

Despite the Respondent's criminal conviction, the factors in his favor lead us to the conclusion that there is an insufficient reason to revoke his medical license. There also is no reason to place him on probation. Probation usually is imposed in a professional misconduct proceeding when a physician is impaired by drugs or alcohol or when a physician has provided substandard medical care. In other words, probation is imposed when there is a need to protect the physician's patients by monitoring the conduct of the physician. That is not the case here. There is no indication that the Respondent needs to be monitored in any respect relevant to the safety of his patients. Also, the Respondent is serving a sentence of probation pursuant to his criminal conviction. One probation is sufficient in this case. The recommendation of a \$10,000.00 fine also is rejected. The Respondent's financial situation is difficult and a fine would have an unnecessarily harsh impact on that situation.

The Hearing Committee has concluded that a censure and reprimand and a three-month suspension of the Respondent's license constitute a sufficient penalty for the Respondent's criminal behavior. The suspension will commence on the date that the Respondent's license was suspended by the Commissioner's Order and Notice of Hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded for his criminal conduct.
2. The Respondent's license to practice medicine is suspended for three months, commencing on the date that his license was suspended pursuant to the Commissioner's Order and Notice of Hearing.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Middletown, New York

June 13, 2005


Fred S. Levinson, M.D.
Chairperson

Diane M. Sixsmith, M.D.
Frances Tarlton

EXHIBIT
5/26/05 EV-10

IN THE MATTER
OF
ANDRE BENONY CELESTIN, M.D.
CO-04-11-5602-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: ANDRE BENONY CELESTIN, M.D.
2348 Dutch Broadway
Elmont, NY 11003

ANDRE BENONY CELESTIN, M.D.
Katmar Medical Center
205 Clankron Avenue
Brooklyn, NY 11226

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 **ANDRE BENONY CELESTIN, M.D.**, Respondent, licensed to practice medicine in New York state on November 15, 1985, by license number 164742, has been found guilty, based on a plea of guilty, of committing an act constituting a felony, in the United States District Court, Southern District of New York.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **ANDRE BENONY CELESTIN, 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 20th day of April, 2005 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, 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, 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

3/10

,2005


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
ANDRE BENONY CELESTIN, M.D.
CO-04-11-5602-A

STATEMENT
OF
CHARGES

ANDRE BENONY CELESTIN, M.D., the Respondent, was authorized to practice medicine in New York state on November 18, 1985, by the issuance of license number 164742 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about June 15, 2004, in the United States District Court, Southern District of New York, Respondent was found guilty, based on a plea of guilty, of one (1) count of Solicitation and Receipt of Medicare Kickbacks Fraud, in violation of Title 42, United States Code, §1320a-7b(b)(1)(A), a felony, and sentenced to three (3) years probation to include six (6) months home confinement, a \$6,000.00 fine, and a \$100.00 assessment.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law.

1. The facts in Paragraph A.

DATED: *March 10*, 2005
Albany, New York


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