



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

March 29, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Naum G. Vaisman, M.D.
840 E. 8th Street
Apartment 4J
Brooklyn, New York 11230

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

RE: In the Matter of Naum G. Vaisman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-067) 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 Respondent 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.

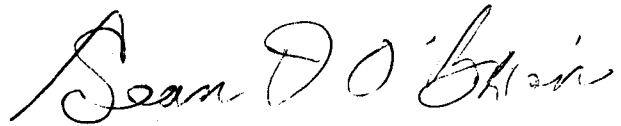
The notice of review served on the Administrative Review Board should be forwarded to:

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 dark ink and is positioned above the printed name and title.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

IN THE MATTER
OF
NAUM G. VAISMAN, M.D.

COPY
DETERMINATION
AND
ORDER

BPMC NO. 06-067

A Notice of "Commissioner's Summary Order and Notice of Referral Proceeding" and a Statement of Charges, both dated 12/21/05, were served upon the Respondent, **NAUM G. VAISMAN, M.D.** **RAVINDER MAMTANI, M.D.**, Chairperson, **JAGESH M. TRIVEDI, M.D.** and **ANTIONETTE M. MYERS, R.N., COHN-S, CCM**, 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 3/23/06, 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.**, of Counsel. The Respondent appeared pro se.

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 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 Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i), based upon his convictions of crimes under New York State law. Copies of the Summary Order and the Statement of Charges are attached to this Determination and Order as Appendix 1.

This case was also brought pursuant to Public Health Law §230(12)(b), which, among other things, authorizes the Commissioner to issue a summary suspension prohibiting a licensee from practicing pending a hearing when the licensee has been convicted of a felony under New York State law, pending a hearing on the misconduct charges.

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. **NAUM G. VAISMAN, M.D.**, the Respondent, was authorized to practice medicine in New York State on 10/20/78, by the issuance of license number 136522 by the New York State Education Department. (Ex. 4)
2. On 6/9/05, Respondent was convicted by guilty plea in the Supreme Court of the State of New York, Queens County, of the crime of Insurance Fraud in the 5th Degree, a class A misdemeanor. Respondent was sentenced to a one-year conditional discharge and fees and surcharges totaling \$120.00. (Ex. 5)
3. On 8/3/05, Respondent was convicted by guilty plea in the Supreme Court of the State of New York, Kings County, of the crime of Insurance Fraud in the 4th Degree, a class E felony. Respondent was sentenced to a three-year conditional discharge, a fine of \$50,000 and fees and surcharges totaling \$210. (Ex. 6)

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that, by being convicted of crimes under New York State Law, Respondent committed misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(i), and that the appropriate penalties

for this misconduct are the imposition of a one-year suspension of his license, the portion of which has yet to be served being stayed and replaced by 3 years probation, under terms to be set forth below,

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

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

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent was convicted by guilty plea in two different courts of insurance fraud, one conviction being a felony and the other a misdemeanor. The conduct that led to the felony conviction, involving the filing of claims for no-fault insurance benefits, is detailed in the indictment that led to that conviction. (Ex. 6)

At the hearing, Respondent attempted to portray his involvement in the criminal scheme that led to the convictions as essentially innocent. Although the Hearing Committee was sympathetic to Respondent's situation, it is precluded from considering this argument because of the statutory elements of the crimes of which Respondent was convicted. Specifically, Penal Law §176.05 defines a fraudulent insurance act [an element of both of the crimes of which Respondent was convicted] as the submission of claims, knowingly and with intent to defraud, that contain any written statement the person knows

to contain materially false information concerning any material fact, or that conceals material information with intent to mislead.

By pleading guilty to the crimes of insurance fraud, Respondent admitted that he filed false claims with knowledge and intent to defraud. The convictions are binding on Respondent, and he cannot now be heard to argue that his involvement in the criminal activities was innocent.

By engaging in behavior that led to these convictions, Respondent committed misconduct, as set forth above. Accordingly, pursuant to Public Health Law Section 230(10)(p), the only issue remaining to be decided in this decision is the appropriate penalty for this misconduct.

The Hearing Committee concludes that, given the serious nature of the conduct at issue, a suspension of Respondent's license for one year is called for, commencing with the date the summary suspension was imposed by the commissioner. The Hearing Committee determined not to revoke Respondent's license because of his otherwise, as far as this record reveals, long and unblemished record, and the distinguished nature of his education, training and practice of psychiatry (see Ex.'s A-PP, an extensive collection of favorable documentation regarding Respondent's career, including testimonials from former colleagues and others with whom he has dealt).

The Hearing Committee concludes that, despite the criminal convictions, Respondent has much to offer to the residents of New York State, that the likelihood of a recurrence of criminal conduct is low, and that Respondent should be allowed the opportunity to resume practice under conditions that will deter a recurrence of such conduct. Therefore, the Hearing Committee concludes that the portion of the suspension

remaining upon issuance of this decision should be stayed, and Respondent placed on probation for a period of three years.

ORDER


IT IS HEREBY ORDERED THAT:

1. The New York medical license of **NAUM G. VAISMAN, M.D.** is hereby **SUSPENDED** for a period of **ONE YEAR**, commencing from the effective date of the summary suspension imposed by the Commissioner. That portion of the suspension remaining upon issuance of this decision is hereby **STAYED**.
2. Respondent is placed on **PROBATION** for a period of **THREE 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. 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.
 - D. 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.

- E. 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 staff at practice locations or OPMC offices.
- F. 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.
- G. Respondent shall practice medicine only when his billings, billing records, underlying chart entries and other pertinent documentation are monitored/audited by a licensed physician or other appropriate professional ("the billing monitor") proposed by Respondent and subject to the written approval of the Director of OPMC (see Public Health Law §230(18)(a)(iv)).
- H. Respondent shall make available to the billing monitor any and all records or access to the practice requested by the billing monitor, including on-site observation. The billing monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by Respondent, including patient records, prescribing information, billing and other office records, or any other records necessary to ensure that Respondent's billings are valid and appropriate, and that medical care he approves or orders is medically necessary. Any perceived deviation of accepted standards of medical care or billing, or refusal to cooperate with the monitor, shall be reported within 24 hours to OPMC.
- I. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, of the monitor.
- J. Respondent shall cause the monitor to report quarterly, in writing, to the Director of OPMC.
- K. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
- L. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the 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 Respondent as may be authorized pursuant to the law.

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

DATED: Hopewell Junction, New York
Mar 28, 2006



RAVINDER MAMTANI, M.D.
Chairperson

JAGESH M. TRIVEDI, M.D.
ANTIONETTE M. MYERS, R.N., COHN-S,
CCM

APPENDIX 1

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

EXHIBIT

IN THE MATTER

OF

NAUM G. VAISMAN, M.D.
CO-04-04-2062-A

COMMISSIONER'S
SUMMARY
ORDER
AND
NOTICE OF
HEARING

TO: NAUM G. VAISMAN, M.D.
840 E. 8th Street
Apt. 4J
Brooklyn, NY 11230

The undersigned, Dennis P. Whalen, Executive Deputy 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 **NAUM G. VAISMAN, M.D.**, Respondent, licensed to practice medicine in New York state on October 20, 1978, by license number 136552, has been found guilty, based on committing an act constituting a felony under federal law, in the Supreme Court of the State of New York, Kings County.

It is therefore,

ORDERED, pursuant to New York Public Health Law § 230(12)(b), that effective immediately, **NAUM G. VAISMAN, 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 New York Public Health Law §230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law § 230, and New York State Administrative Procedure 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 19th day of January, 2006 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 § 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 § 230-A. YOU ARE URGED TO OBTAIN
AN ATTORNEY FOR THIS MATTER.**

DATED: Albany, New York

12.21.2005


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
OF
NAUM G. VAISMAN, M.D.
CO-04-04-2062-A

STATEMENT
OF
CHARGES

NAUM G. VAISMAN, M.D., the Respondent, was authorized to practice medicine as a Physician in New York state on October 20, 1978, by the issuance of license number 136552 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 9, 2005, in the Supreme Court of the State of New York, Queens County, Kew Gardens, New York, Respondent was found guilty, based on a plea of guilty, of Insurance fraud in the fifth degree, in violation of New York Penal Law §176.10, a class A misdemeanor, and was sentenced to a one (1) year conditional discharge, a \$10.00 CVAF, and a \$110.00 surcharge.

B. On or about August 3, 2005, in the Supreme Court of the State of New York, Kings County, Brooklyn, New York, Respondent was found guilty, based on a plea of guilty, of Insurance fraud in the fourth degree, in violation of New York Penal Law, §176.15, a class E felony, and was sentenced to a three (3) year conditional discharge, a \$50,00.00 fine, a \$10.00 CVAF, and a \$200.00 surcharge.


SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York State Education Law §6530(9)(a)(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.
2. The facts in Paragraph B.

DATED: *December 21*, 2005
Albany, New York


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