



Public
**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

October 30, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

William Tursi, M.D.
741 Jewett Avenue
Staten Island, New York 10314

William Tursi, M.D.
454 Edinboro Road
Staten Island, New York 10306

William Tursi, M.D.
774 Manor Road
Staten Island, New York 10314

Anthony Z. Scher, Esq.
Wood & Scher
222 Bloomingdale Road, Suite 311
White Plains, New York 10605

Robert Bogan, Esq.
Joel E. Abelove, Esq.
NYS Department of Health
Hedley Building – 4th Floor
433 River Street
Troy, New York 12180

RE: In the Matter of William Tursi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-242) 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.

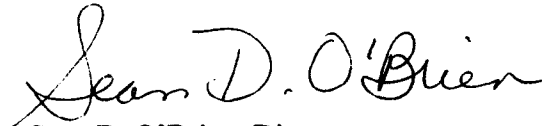
The notice of review served on the Administrative Review Board should be forwarded to:

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,


Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

COPY

IN THE MATTER
OF
WILLIAM TURSI, M.D.

DETERMINATION
AND
ORDER
BPMC #06-242

A hearing was held on October 18, 2006, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding, dated August 18, 2006, and a Statement of Charges, also dated August 18, 2006, were served upon the Respondent, **William Tursi, M.D.** An Amended Statement of Charges, dated October 5, 2006, was subsequently served upon the Respondent. Pursuant to Section 230(10)(e) of the Public Health Law, **Fred S. Levinson, M.D.**, Chairperson, **Marvin L. Hartstein, M.D.**, and **Ms. Frances Tarlton**, duly designated members of the State Board for Professional Medical Conduct ("the Board"), 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.**, and **Joel E. Ablove, Esq.**, of Counsel. The Respondent appeared in person and was represented by Wood & Scher, **Anthony Z. Scher, Esq.**, of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10). This statute provides for an administrative hearing when a licensee is charged with professional misconduct pursuant to Education Law Section 6530. Public Health Law Section 230(10) authorizes the Board to appoint a hearing committee of three of its members to hold a hearing to determine whether a physician has committed professional misconduct and, if so, to determine the penalty to be imposed.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(2), (3), (9)(a)(ii) and (21). Copies of 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:

William Tursi, M.D.
Thomas Vazzano, M.D.
Mark Jarrett, M.D.
Mr. Thomas Cavanaugh

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. William Tursi, M.D., the Respondent, was authorized to practice medicine in New York State on September 21, 1979, by the issuance of license number 139729 by the New York State Education Department (Petitioner's Ex. 6).

2. On or about October 4, 1989, the Respondent prepared and signed a Merchant Marine Personnel Physical Examination Report for patient R.S., for submission to the Department of Transportation, U.S. Coast Guard, wherein he knowingly answered questions falsely by concealing the patient's hypertension and the medications that the patient took for this condition (Petitioner's Ex. 10, 13 and 14, Respondent's testimony).

3. On or about September 14, 1995, the Respondent prepared and signed a Merchant Marine Personnel Physical Examination Report for patient R.S., for submission to the Department of Transportation, U.S. Coast Guard, wherein he answered questions falsely by concealing the patient's hypertension and the medications that the patient took for this condition (Petitioner's Ex. 11, 13 and 14, Respondent's testimony).

4. On November 4, 2005, in the United States District Court, Eastern District of New York, the Respondent was found guilty, based on a plea of guilty, of False Statements, in violation of 18 U.S.C. Section 1001, a felony, and was sentenced to six months home confinement, community service, a \$5,000.00 fine and a \$100.00 assessment. The conviction was based on the Respondent's having prepared and signed on or about August 14, 2000, a Merchant Marine Personnel Physical Examination Report for patient R.S., for submission to the U.S. Coast Guard, wherein he answered questions falsely by concealing the existence of medical conditions and the medications he took for them, including the patient's hypertension and medications for that condition. (Petitioner's Ex. 7, 8 and 9).

VOTE OF THE HEARING COMMITTEE

FIRST AND SECOND SPECIFICATIONS

"Respondent violated New York Education Law Section 6530(2) by practicing the profession fraudulently..."

VOTE: Sustained (3-0)

THIRD SPECIFICATION

"Respondent violated New York Education Law Section 6530(3) by practicing the profession with negligence on more than one occasion..."

VOTE: Not Sustained (3-0)

FOURTH 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)

FIFTH AND SIXTH SPECIFICATION

"Respondent violated New York Education Law Section 6530(21) by willfully making a false report required by law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

One of the Respondent's patients, R.S., was a pilot on the Staten Island Ferry. Every five years, the U.S. Coast Guard did a review of the health of the each person who held this job. As part of this review, the pilot was required to have a physician fill out a standard form medical report that asked a series of questions about the pilot's health. The Petitioner alleged and the Respondent admitted during the hearing that on three occasions (1989, 1995 and 2000) the Respondent filled out these medical reports for patient R.S. and that, in all three reports, the Respondent concealed the patient's hypertension and the medications that the patient was taking for this condition. The 2000 report led to the Respondent's conviction in the United States District Court, Eastern District of New York, for False Statements, a felony.

Petitioner's Ex. 13 and 14 are medical records for R.S. from the Respondent's office for treatment received between 1981 and 1995. The Petitioner argued that these

records disclose several medical conditions in addition to hypertension that should have been disclosed on the 1989 and 1995 medical reports, but were not. The Petitioner also argued that there were several medications listed in these medical records in addition to hypertension medications that should have been disclosed on the 1989 and 1995 medical reports, but were not. The Hearing Committee has compared the information in these medical records with the information requested on the 1989 and 1995 medical report forms. We conclude that although the medical records describe medical conditions and medications in addition to hypertension and hypertension medications, they are not among those that are the subject of inquiry in the two medical reports. The Hearing Committee concludes that the hearing record supports a finding of false information in the 1989 and 1995 medical reports regarding hypertension and hypertension medications only.

The Amended Statement of Charges alleges that the false information in the 1989 and 1995 medical reports constitutes three types of professional misconduct: practicing the profession fraudulently (First and Second Specifications, Education Law Section 6530[2]), practicing the profession with negligence on more than one occasion (Third Specification, Education Law Section 6530[3]), and willfully making a false report (Fifth and Sixth Specifications, Education Law Section 6530[21]). The Respondent admitted in his testimony that he falsified the 1989 and 1995 reports intentionally. Based on this admission, the Hearing Committee concludes that the fraud and filing of false reports specifications must be sustained. The negligence specification, however, should not be sustained. A negligent failure to report required information on medical forms would be a failure cause by carelessness, laziness or a lack of attention, not by an intentional decision to leave out required information. Intentional dishonesty is not within the definition of "negligence." There is some information in the hearing record about the

Respondent negligently failing to disclose some medications on the 2000 medical report, but the Amended Statement of Charges alleges negligence only for the 1989 and 1995 medical reports. The negligence specification cannot be sustained.

There is only one specification concerning the 2000 medical report. The Fourth Specification alleged that the criminal conviction for the inaccurate information in this report is professional misconduct pursuant to Education Law Section 6530(9)(a)(ii), which defines conviction of a federal crime as professional misconduct. The hearing record contains uncontradicted evidence that this form of professional misconduct occurred (Petitioner's Ex. 7, 8 and 9, the Respondent's testimony).

The Petitioner recommended that the Respondent's license to practice medicine be revoked. The Hearing Committee believes, because of mitigating circumstances, that a revocation is unnecessarily severe. The Respondent testified credibly that he knew that writing the false medical reports was wrong, but believed that no harm could come from this dishonesty. During the patient's visits to the Respondent's office to have the medical reports filled out, the patient was distraught about losing his job if his hypertension were disclosed. The Respondent testified that he knew from experience that hypertension that was well managed, which was the patient's situation, did not jeopardize R.S.'s job. The Respondent, however, could not convince R.S. of this. The Respondent testified that he eventually gave in to the patient's pleas and concealed the hypertension and hypertension medications when he filled out the forms. The Respondent testified that he knew this was wrong, but that he was certain that R.S.'s hypertension and hypertension medications did not make him a danger on the job and that he knew that the Coast Guard, had it received an accurate medical report, would not have prevented the Respondent from continuing in his job because of the hypertension and medications.

Another factor weighing against revocation is that the Hearing Committee is convinced that the ordeal that the Respondent has suffered in the criminal proceeding has rendered it extremely unlikely that the Respondent will ever commit a similar infraction.

R.S. was the pilot in charge of the Staten Island Ferry on the day that it crashed and several passengers were killed or injured. The Petitioner, in its closing statement, supported its recommendation for a license revocation by claiming that the Respondent's false statements on the medical forms led to this tragedy. However, there is no support in the hearing record for this position. There is no evidence that R.S.'s hypertension or hypertension medications played any role in the accident. During the sentencing hearing in the United States District Court, the Honorable Edward R. Korman stated that the prosecution failed to prove by a preponderance of the evidence that the medications that R.S. took were a cause of the accident (Petitioner's Ex. 9, pp. 5-6). This accident would be a persuasive and dramatic reason in support of a revocation if there were evidence to support the contention that the hypertension or hypertension medications caused the accident, but the hearing record contains no such proof.

The Respondent argued that no penalty should be imposed by this Hearing Committee. This argument was based on the proposition that the Respondent had already suffered by going through the criminal court process. The Respondent also noted that he has been penalized in another way; he was suspended from the practice of medicine pending the outcome of this hearing by the Commissioner's Order dated August 18, 2006 (Petitioner's Ex. 1). The Hearing Committee rejects the Respondent's position that there be no penalty imposed.

Although the Respondent undoubtedly suffered a traumatic experience in the criminal court process, his sentence did not include imprisonment. Contrary to the

experience of many convicted defendants, it can be argued that the Respondent did not suffer greatly from the criminal court proceeding.

Another factor weighing against the Respondent is that the patient's medical record for October 4, 1989, the date that the 1989 medical report was filled out, indicates a blood pressure of 160 over 100, which qualifies as an elevated blood pressure. This chart also indicates that the patient had not been taking his blood pressure medications. (Petitioner's Ex. 13, p. 19). The Respondent testified credibly that this blood pressure was not high enough to disqualify the patient from his job, but this information raises the possibility that the patient's situation was not as safe as the Respondent contends.

The Hearing Committee has concluded that a one-year suspension of the Respondent's license to practice medicine is a sufficient penalty for his professional misconduct. The time period of this suspension will include the time that the Respondent's license has been suspended pursuant to the Commissioner's Order. The Respondent will also be required to complete ten hours of continuing medical education on the subject of medical ethics.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is suspended for one year. The suspension is effective on the date that the suspension imposed by the Commissioner's Order commenced.

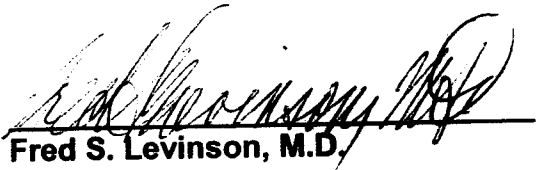
2. The Respondent shall successfully complete ten hours of continuing medical education on the subject of medical ethics. The course or courses shall be proposed by the Respondent and are subject to prior written approval by the Petitioner's Office of Professional Medical Conduct (NYS Department of Health, Office of Professional Medical

Conduct, 433 River Street, Troy, NY 12180). The continuing medical education must be successfully completed no later than the final day of the Respondent's suspension.

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

October 30, 2006



Fred S. Levinson, M.D.
Chairperson

Marvin L. Hartstein, M.D.
Frances E. Tarlton

APPENDIX I

ORIGINAL

EXHIBIT

STATE OF NEW YORK
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

DEPARTMENT OF HEALTH

IN THE MATTER
OF
WILLIAM TURSI, M.D.
CO-04-08-3841-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: WILLIAM TURSI, M.D.
454 Edinboro Road
Staten Island, NY 10306

WILLIAM TURSI, M.D.
774 Manor Road
Staten Island, NY 10314

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr.P.H., Commissioner 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 that **WILLIAM TURSI, M.D.**, Respondent, licensed to practice medicine in the State of New York as a physician on September 21, 1979, by license number 139729, has been found guilty of committing an act constituting a felony under federal law in the United States District Court, Eastern District of New York.

It is therefore:

ORDERED, pursuant to New York Public Health Law §230(12), that effective immediately **WILLIAM TURSI, M.D.**, Respondent, shall not practice medicine as a physician in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine as a physician. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law §230(12).


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 New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), 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 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 BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

August 18, 2006


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

WILLIAM TURSI, M.D.
CO-04-08-3841-A

STATEMENT

OF

CHARGES

WILLIAM TURSI, M.D., Respondent, was authorized to practice medicine in New York state on September 21, 1979, by the issuance of license number 139729 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about November 4, 2005, in the United States District Court, Eastern District of New York, Respondent was found guilty, based on a plea of guilty, of False Statements, in violation of 18 U.S.C. §1001, a felony, and was sentenced to one (1) year special conditions, six (6) months home confinement, 300 hours of community service, a \$5,000.00 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, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *August 18*, 2006
Albany, New York


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

ORIGINAL



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

IN THE MATTER
OF
WILLIAM TURSI, M.D.
CO-04-08-3841-A

AMENDED
STATEMENT
OF
CHARGES

WILLIAM TURSI, M.D., Respondent, was authorized to practice medicine in New York State on September 21, 1979, by the issuance of license number 139729 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 4, 1989, Respondent prepared and executed a Merchant Marine Personnel Physical Examination Report, for Patient A, for submission to the Department of Transportation, U.S. Coast Guard, wherein he knowingly answered falsely, under the sections "HEART & LUNGS," and/or "STIFF JOINTS, OLD FRACTURES, DEFORMITIES & OTHER MAJOR DEFECTS," and/or "REMARKS & MEDICATION," by failing to disclose Patient A's physical condition and medications.

B. On or about September 14, 1995, Respondent prepared and submitted a Merchant Marine Personnel Physical Examination Report, for Patient A, for submission to the Department of Transportation, U.S. Coast Guard, wherein he knowingly answered falsely, under the sections "Doctor's assessment" and/or "Medications taken," and/or "Comments on Findings" by checking the boxes "No prescription medications" and/or "No Significant Medical History" and/or failing to disclose Patient A's physical condition and medications.

C. On or about November 4, 2005, in the United States District Court, Eastern District of New York, Respondent was found guilty, based on a plea of guilty, of False Statements, in violation of 18 U.S.C. §1001, a felony, and was sentenced to one (1) year special conditions, six (6) months home confinement, 300 hours of community service, a \$5,000.00 fine, and a \$100.00 assessment.

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

1. The facts in Paragraph A.
2. The facts in Paragraph B.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(3) by practicing the profession with negligence on more than one occasion, in that Petitioner charges:

3. The facts in Paragraphs A and/B.

FOURTH SPECIFICATION

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

4. The facts in Paragraph C.

FIFTH AND SIXTH SPECIFICATIONS

Respondent violated New York Education Law §6530(21) by willfully making a false report required by law, in that Petitioner charges:

5. The facts in Paragraph A.
6. The facts in Paragraph B.

DATED: *October 5*, 2006
Albany, New York


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