



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

May 16, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard Yaldizian, M.D.

Redacted Address
I

Anthony Z. Scher, Esq.

Wood & Scher

222 Bloomingdale Road – Suite 311

White Plains, New York 10605

Robert Bogan, Esq.

NYS Department of Health

433 River Street – Suite 303

Troy, New York 12180-2299

RE: In the Matter of Richard Yaldizian, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-76) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

(COPY)

**IN THE MATTER
OF
RICHARD YALDIZIAN, M.D.**

**DETERMINATION
AND
ORDER**
BPMC #08-76

A hearing was held on March 20, 2008, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges, both dated January 8, 2008, were served upon the Respondent, **Richard Yaldizian, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **John B. Waldman, M.D.**, Chairperson, **Eleanor Kane, M.D.**, and **Mary Ann T. Cresanti, N.P.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **William J. Lynch, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Wood and 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)(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 Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Richard Yaldizian, M.D.
Anthony Mario Palumbo
Sarah Ziegler
Robert Ziegler

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. Richard Yaldizian, M.D., the Respondent, was authorized to practice medicine in New York State on September 24, 1982, by the issuance of license number 151575 by the New York State Education Department (Petitioner Ex. 4).

2. On or about May 18, 2005, in the Supreme Court of the State of New York, Queens County, New York, Respondent was convicted, based on a plea of guilty, of Insurance Fraud in the Fifth Degree, in violation of New York Penal Law Section 176.10, a class A misdemeanor, and was sentenced to a one year conditional discharge, a \$10.00 CVAF, and a \$110.00 surcharge (Petitioner Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

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

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The record establishes that Respondent pled guilty to and was convicted of one count of the crime of Insurance Fraud in the Fifth Degree. Pursuant to Public Health Law 230(10)(p), the evidence at the hearing was limited to testimony and documents relating to the nature and severity of the penalty to be imposed.

Respondent testified on his own behalf. He acknowledged that he was disciplined previously by the New York State Board of Professional Medical Conduct for conduct including a charge of practicing the profession fraudulently. He indicated that he encountered difficulty obtaining a hospital-based practice subsequent to that disciplinary

action which took place in 1991, and that he currently has a small office practice in internal and rehabilitative medicine with no hospital admitting privileges.

Respondent indicated that the criminal conviction in 2005, which is the basis of this disciplinary action, arose out of part-time employment at a no-fault clinic in 2002. He stated that was initially hired to evaluate patients and refer them for physical therapy or diagnostic testing. He was paid \$75.00 per hour, four hours per week. The clinic had no professional nursing staff. Nonetheless, Respondent acknowledged signing narratives that contained medical information which he had not obtained.

Several months later when the medical director and the office manager left the clinic, Respondent agreed to become the medical director and was paid \$90.00 per hour, four hours per week. As medical director, Respondent opened a bank account, paid the staff and signed all of the paperwork. The two individuals that he spoke with at the management company had no professional credentials. He testified that one was named Jack and that he forgot the name of the other individual. The no-fault clinic was closed three months later following an undercover investigation. Respondent admitted that he had signed narratives for physical examinations of the undercover agents which contained medical information including vital signs which he had never ascertained.

Respondent offered the testimony of three character witnesses. The first to testify was a chiropractor who, after completing his education in 1995, worked with Respondent for four years. The witness described Respondent as trustworthy, compassionate and respectful. The two other character witnesses were a sixteen-year-old patient and his mother. They testified that that Respondent was a person of character and integrity who provided high quality care in a compassionate and respectful manner.

The Hearing Committee, however, finds that Respondent's own testimony regarding his involvement in the no fault clinic was not credible. Respondent admitted that he used a

template created by a prior doctor at the no-fault clinic containing vital sign information. He evaded questions by his own attorney as to whether he knew the information was false by suggesting that it was possible that nursing staff in the clinic had taken a blood pressure or a pulse even though he had never seen anyone take a patient's vital signs. The only basis for this claim appeared to be that a blood pressure kit was in the room across the hall from where he worked. He then claimed that a physician probably does not have to have vital signs taken for certain patients who present complaining of a neck or back injury or a headache. He went on to suggest that taking vital signs was not necessary because all the patients were very stable and had been seen in emergency rooms by a nurse and doctor before they came to see him. When asked when he first became aware that the clinic might be engaging in improper activities, Respondent evaded the question. Instead, he testified that he told the people in the billing department to make sure that all of the services are performed, and he stated that he simply signed bills on the assumption that it was done right. Based upon this testimony by Respondent, the Hearing Committee infers that Respondent knew early on in his tenure that the no-fault clinic was operating fraudulently.

Although Respondent's counsel contended that Respondent fell within a class of unsuspecting physician who inadvertently take employment with a fraudulent medical practice and extricate themselves from the practice as soon as they discover fraud is occurring, Respondent's own testimony does not support that argument. In this instance, Respondent continued his employment as a physician at the clinic when he knew it was operating fraudulently. When the medical director and the office manager left several months later, he then accepted the medical director position and continued the fraudulent operation.

The Hearing Committee also found that Respondent's testimony regarding his prior misconduct was not credible. Respondent alleged that he obtained printed letterhead indicating that he was board certified in internal medicine even though he had never taken the exam, and that he inadvertently used the letterhead without whitening out the false certification. This assertion is not believable, particularly in light of Respondent's testimony that he failed the examination in 1989 or 1990, and has not taken the examination since.

Respondent also showed a cavalier attitude when testifying about his current credentials. Although Respondent testified that he is currently "board eligible" in internal medicine, he later acknowledged that he did not know whether he was. In fact, he acknowledged that he received a letter from the board three or four years ago stating that that credentials for board eligibility versus board certification were going to change.

Although Respondent testified that he accepted responsibility for the acts that occurred when the criminal case was being resolved, he indicated that he was not aware that accepting a plea in the criminal matter would result in a disciplinary action before this Committee. Respondent's failure to understand the consequences of his criminal plea, however, has no bearing on this disciplinary proceeding. Further, the record is devoid of any evidence of remorse or rehabilitation. The Hearing Committee finds that Respondent's conduct was serious, and that Respondent's refusal to accept responsibility for his actions increases the likelihood that he will repeat his misconduct in the future. The Hearing Committee concludes that Respondent's criminal conviction warrants the revocation of his license.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice medicine in New York State is revoked.

2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York
may 9, 2008

Redacted Signature

John B. Waldman, M.D.
Chairperson

Eleanor Kane, M.D.
Mary Ann T. Cresanti, N.P.

TO:

Richard Yaldizian, M.D.

Redacted Address

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

Robert Bogan, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

APPENDIX 1

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

IN THE MATTER

OF

RICHARD YALDIZIAN, M.D.
CO-05-08-3883-A

NOTICE OF

REFERRAL

PROCEEDING

TO: RICHARD YALDIZIAN, M.D.
 Redacted Address

RICHARD YALDIZIAN, M.D.
Lefrac Medical, P.C.
94-38 59th Avenue
Elmhurst, NY 11373

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20th day of February, 2008, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. 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 which 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.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted 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 (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. 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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

Jan. 8, 2008

Redacted Signature

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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
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
RICHARD YALDIZIAN, M.D.
CO-05-08-3883-A

STATEMENT

OF
CHARGES

RICHARD YALDIZIAN, M.D., Respondent, was authorized to practice medicine in New York state on September 24, 1982, by the issuance of license number 151575 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 18, 2005, in the Supreme Court of the State of New York, Queens County, New York, Respondent was convicted, 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.

SPECIFICATION

Respondent violated New York 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.

DATED: *Jan. 8*, 2008
Albany, New York

Redacted Signature

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