



Public

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

November 16, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Homayoon Pasdar, M.D.
2100 Keystone Avenue
Suite 400
Drexel Hill, PA 19026

Homayoon Pasdar, M.D.

Redacted Address

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Homayoon Pasdar, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-204) 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), (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 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,

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
HOMAYOON PASDAR, M.D.

DETERMINATION
AND
ORDER

BPMC #09-204

A hearing was held on October 21, 2009, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated December 19, 2008, were served upon the Respondent, **Homayoon Pasdar, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Peter B. Kane, M.D.**, Chairperson, **John Thomas II, M.D.**, and **Mary Patricia Meagher, R.N.**, 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 **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared at the hearing and represented himself.

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)(d). 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:

Homayoon Pasdar, 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 was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Homayoon Pasdar, M.D., the Respondent, was authorized to practice medicine in New York State on February 3, 1969, by the issuance of license number 103103 by the New York State Education Department (Petitioner's Ex. 4).

2. On or about April 30, 2008, the Pennsylvania Department of State, State Board of Medicine ("Pennsylvania Board"), by a Consent Agreement and Order ("Pennsylvania Order"), imposed a public reprimand and required the Respondent to

teach ten hours of continuing medical education on the subject of wrong-sided surgery and medical error prevention, based on his departing from a quality standard of the profession by performing wrong-sided surgery. (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;" and
- New York Education Law Section 6530(4) - "Practicing the profession with gross negligence on a particular occasion;"

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constituted (sic) professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent argued that he did not have a New York State license to practice medicine and, as a result, disciplinary action could not be taken against him. This argument is rejected. Petitioner's Ex. 4 is a copy of the License Information for the Respondent maintained by the Office of the Professions of the New York State Education Department. It indicates that the Respondent has held license number 103103 since

February 3, 1969. This is convincing evidence that the Respondent has a New York State medical license.

The charges against the Respondent relate to his treatment of one patient, G.C., in 2003. This patient had a left lung nodule that was followed for two years by a pulmonary specialist. On April 15, 2003, a CT scan showed an increase in size of the nodule in the left lung. On April 30, 2003, a PET scan showed that the left lung nodule showed more intense hypermetabolic activity than it had previously. On June 6, 2003, a Bronchoscopy with biopsy showed a malignancy in the left lung.

G.C. was referred to the Respondent in July of 2003. At that time, for reasons not disclosed in the hearing record, the Respondent adopted the opinion that the malignant nodule was in the right lung. In a letter to the referring physician, the Respondent stated that the April 30, 2003, PET scan "reports no change in the spot on the left side, however, the scan is now intensely hypermetabolic on the right side." (Petitioner's Ex. 5, p. 3).

The Respondent referred G.C. to a cardiologist to determine whether she could be cleared for surgery. On July 16, 2003, the cardiologist wrote a letter on which the Respondent was copied. The letter stated that the left lung nodule had increased in size and became more active on PET scan. The cardiologist provided clearance in a letter dated July 25, 2003. On August 12, 2003, the Respondent ignored the cardiologist's reference to the nodule in the left lung and performed surgery on the right lung. He found no tumor. There were no chest X-rays, CT scans or diagnostic test reports in the operating room and the Respondent did not request their production. On September 12, 2003, another surgeon performed surgery on G.C.'s left lung and removed the tumor.

Although the Respondent committed an egregious error, the Hearing Committee is convinced that he is no longer a risk to surgical patients. In the Pennsylvania Order, the Pennsylvania Board required the Respondent to give ten one hour lectures on the subject

of wrong-sided surgery and medical error prevention. The Respondent complied with this requirement. The Respondent testified credibly that he has not taken anything for granted involving surgery since his 2003 error. The hospital where he performs surgery has implemented procedures to guard against similar errors. Before surgery begins, a "time out" is taken to verify who the patient is, what type of surgery is to be performed and on what side that surgery is to be performed. X-rays are now always available in the operating room. The Respondent testified credibly that there have been no problems in his practice since the 2003 mistake.

The Respondent testified that he will never practice medicine in New York State and that he is going to retire next year. The Hearing Committee believes that the problem was remedied years ago in Pennsylvania and sees no purpose to be served by imposing any penalty in New York State on the Respondent.

ORDER

IT IS HEREBY ORDERED THAT:

1. No penalty is imposed on the Respondent, Homayoon Pasdar, M.D.
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: Cazenovia, New York
10/29, 2009

Redacted Signature

Peter B. Kane, M.D.
Chairperson

John Thomas II, M.D.
Mary Patricia Meagher, R.N.

APPENDIX I



IN THE MATTER

NOTICE OF

OF

REFERRAL

HOMAYOON PASDAR, M.D.
CO-08-06-3691-A

PROCEEDING

TO: HOMAYOON PASDAR, M.D.
2100 Keystone Avenue
Suite 400
Drexel Hill, PA 19026

HOMAYOON PASDAR, M.D.

Redacted Address

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 18th day of February, 2009, 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 who shall be an attorney admitted to practice in New York state. 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

Dec. 19, 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

HOMAYOON PASDAR, M.D.
CO-08-06-3691-A

STATEMENT

OF

CHARGES

HOMAYOON PASDAR, M.D., Respondent, was authorized to practice medicine in New York state on February 3, 1969, by the issuance of license number 103103 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 30, 2008, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine, (hereinafter "Pennsylvania Board"), by a Consent Agreement and Order (hereinafter "Pennsylvania Order"), PUBLICLY REPRIMANDED Respondent and required him to complete ten (10) hours of CME on the subject of wrong-sided surgery and medical error prevention, based on departing from a quality standard of the profession.

B. The conduct resulting in the Pennsylvania Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
and/or
2. New York Education Law §6530(4) (gross negligence).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having **disciplinary action** taken by a duly authorized professional disciplinary agency of another state, **where the conduct** resulting in the disciplinary action would, if committed in New York state, constituted professional misconduct under the laws of New York state, in that Petitioner **charges:**

1. The facts in Paragraphs A and/or B.

DATED: *Dec. 19*, 2008
Albany, New York

Redacted Signature

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