



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

June 16, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Andrew Ivanson, M.D.

Redacted Address

Michael Kelton, Esq.

630 Third Avenue – 5th Floor

New York, New York 10017

5

Robert Bogan, Esq.

NYS Department of Health

Hedley Park Place

433 River Street – Suite 303

Troy, New York 12180-2299

RE: In the Matter of Andrew Ivanson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-114) 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

IN THE MATTER
OF
ANDREW IVANSON, M. D.

DETERMINATION

AND

ORDER

EPMC #09-114

COPY

A hearing was held on May 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, February 24, 2009, were served upon the Respondent, **Andrew Ivanson, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Mohammad-Reza Ghazi-Moghadam, M.D.**, Chairperson, **Eileen E. Joyce, M.D.**, and **Robin B. Frank**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, 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 with counsel, **Michael Kelton, Esq.**, of New York, New York.

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 THE 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) by having been found guilty of committing a crime under federal law, specifically, making false statements relating to health care matters, in violation of 18 U.S.C. §1035, a felony.

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:

Andrew Ivanson, M.D.

Tatyana Frenkel, M.D. (by phone)

Alexander Bunatin M.D. (by phone)

Ali Khyseyyn, 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 transcript page numbers or exhibits, denoted by the prefixes "T." or "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. **Andrew Ivanson, M.D.**, the Respondent, was authorized to practice medicine in New York State on December 11, 1997, by the issuance of license number 209134 by the New York State Education Department (Petitioner's Ex. 4).

2. On July 23, 2008, the Respondent was found guilty, based on a plea of guilty, of committing a crime under federal law, specifically, making false statements relating to health care matters, in violation of 18 U.S.C. §1035, a felony. (Ex. 5)

3. For the above crime, the Respondent was sentenced to five (5) years probation, 500 hours of community service, a \$5,000.00 fine, \$45,000.00 in restitution and a \$100.00 assessment. (Ex. 5)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(ii) by having been found guilty, after a plea of guilty, of committing a crime under federal law, specifically, making false statements relating to health care matters, in violation of 18 U.S.C. §1035, a felony.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was indicted in the United States District Court for the Eastern District of New York. It appears that the Respondent pled guilty to a crime, specifically, making false statements relating to health care matters, in violation of 18 U.S.C. §1035, a felony. After a guilty plea, Respondent was sentenced to five (5) years probation, 500 hours of community service, a \$5,000.00 fine, \$45,000.00 in restitution and a \$100.00 assessment.

The record in this case shows that the Respondent was authorized to practice medicine in New York State on December 11, 1997, by the issuance of license number 209134 by the New York State Education Department. At the hearing, the Petitioner presented thorough documentation establishing that the Respondent was charged and pled guilty to committing a crime under federal law, specifically, making false statements relating to health care matters, in violation of 18 U.S.C. §1035, a felony. In an effort to lessen the penalty and to explain his client's conduct, the Respondent's attorney offered the testimony of several physicians, two by phone and one in person.

These character witnesses plus the numerous testimonial letters presented at the hearing, Respondent's Exhibits # A through # C-15, show that the Respondent has the respect and admiration of his friends, colleagues, and relatives, including his ex-wife. The panel took these supportive letters and character testimony into account in determining an appropriate penalty for this doctor who pled guilty to a federal crime, the felony of making a false statement relating to health care matters.

It appears that the Respondent pled guilty, in the U.S. District Court, Eastern District of New York, to one charge of an indictment, and this charge, Petitioner's Ex. 5, was received into evidence and made a part of the record herein. The documents in the record go on to establish that the above charges were brought before the Honorable Dora L. Irizarry, U.S. District Judge. The Respondent testified on his own behalf and did not deny the fact that he pled guilty to the above crime and he candidly acknowledged that he was guilty as charged. (T.65).

Respondent indicated that he comes from a family of health care providers and that, from early childhood, it was his dream to be a doctor. He stated that his mother was a pediatrician and she was a beautiful example for him. (T. 48) The Respondent testified that he went to Second Moscow Medical School and graduated in the top of his class. (T. 48)

In assessing the penalty to be imposed in this case, the panel took many factors into account. The central and pivotal point in this case was the fact that the Respondent pled guilty to a felony in Federal court. The Respondent, in his testimony, acknowledged this fact and he admitted that he falsely submitted a bill for an EMG test. (T. 65) This was a federal crime and its admission, by itself, would justify a revocation of the Respondent's license.

In an effort to mitigate the penalty in this case, the Respondent's attorney questioned him about the sentence imposed and, in particular, about the imposition of a \$45,000.00 restitution amount. The Respondent testified that this was a totally artificial amount and he called it "an administrative amount." (T. 69, line 24) He stated that he was only guilty of submitting a false bill for a total amount of \$220. (T. 69, line 8).

On cross-examination, the Department's attorney returned to this point and asked him point blank: "Are you telling me this one thing you pled guilty to is the only time you falsely billed? Answer: Yes." (T. 85, line 24)

The panel did not believe this testimony and looked to Exhibit # 5 in the record and, in particular, at the penalties imposed and took to heart the fact that the Respondent was, among other things, required to pay a fine of \$5,000 and pay restitution of \$45,000. This is what the Respondent pled guilty to and the panel could not believe that he was responsible for only one false bill of \$220. The panel believed that the Respondent was dishonest and should not be trusted with money or be in a position to falsely bill in the future and so they determined that he should be put on probation, after his suspension, and that a condition of his probation be that his practice be limited to work in an Article 28 Hospital or other such facility approved by OPMC, where he would not have the opportunity to commit such a fraud in the future.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is **hereby suspended**, for a period of one year.
3. After the completion of this suspension, Respondent is placed on a term of **probation** of five years. The terms of the probation are attached hereto as Appendix 2 and are incorporated into this Order.
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Fort Johnson, New York
June 27th 2009

Redacted Signature

Mohammad-Reza Ghazi-Moghadam, M.D.,
Chairperson

Eileen E. Joyce, M.D.,
Robin B. Frank

To:

Andrew Ivanson, M. D.

Redacted Address

Michael Kelton, Esq.
630 Third Avenue – 5th floor
New York, N.Y. 10017

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
ANDREW IVANSON, M.D.
CO-08-08-4818-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: ANDREW IVANSON, M.D.

Redacted Address

The undersigned, Richard F. Daines, M.D., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that **ANDREW IVANSON, M.D.**, Respondent, licensed to practice medicine in the State of New York on December 11, 1997, by license number 209134, has been convicted of committing an act constituting a felony under federal law, in the United States District Court, Eastern District of New York, as is more fully set forth in the Statement of Charges attached, hereto, and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), effective immediately **ANDREW IVANSON, M.D.**, shall not practice medicine 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. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law §230(12).

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN
DEFIANCE OF THIS COMMISSIONER'S ORDER SHALL
CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE
MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY
CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY,
DEFINED BY NEW YORK EDUCATION LAW §6512.

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 §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 22nd day of April, 2009, at 10:00 a.m., at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. 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. Respondent shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. 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, and to 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 Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, 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. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, 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
2/24/2009

Redacted Signature

~~RICHARD F. DAINES, M.D.~~
Commissioner of Health
New York State Department of Health

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

IN THE MATTER
OF
ANDREW IVANSON, M.D.
CO-08-08-4818-A

STATEMENT
OF
CHARGES

ANDREW IVANSON, M.D., Respondent, was authorized to practice medicine in New York state on December 11, 1997, by the issuance of license number 209134 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 23, 2008, in the United States District Court, Eastern District of New York, Respondent was found guilty, based on a plea of guilty, of False statements relating to health care matters, in violation of 18 U.S.C. §1035, a felony, and was sentenced to five (5) years probation, 500 hours of community service, a \$5,000.00 fine, \$45,000.00 restitution, 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: *Feb. 24*, 2009
Albany, New York

Redacted Signature

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

APPENDIX 2

Terms of Probation

1. 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.
2. 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.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order
4. Throughout the period of probation, the Respondent's practice shall be limited to work in an Article 28 Hospital or clinic or other such facility subject to the written approval of the Director of OPMC.
5. 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 Respondent 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.
6. 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/her staff at practice locations or OPMC offices.