

DOH 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

December 9, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Isaac Barr, M.D.
1048 Coney Island Avenue
Brooklyn, New York 11230

Richard A. Finkel, Esq.
Eisner, Kleinberg & Finkel
275 Madison – Suite 1000
New York, New York 10016

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

RE: In the Matter of Isaac Barr, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-213) 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, *JFH*

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:djh

Enclosure

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

COPY

DETERMINATION

AND

ORDER

IN THE MATTER
OF
ISAAC BARR, M. D.

BPMC No. 09-213

A hearing was held on November 19, 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 August 13, 2009, were served upon the Respondent, **Isaac Barr, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D.**, Chairperson, **Trevor A. Litchmore, 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. **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, **Richard A. Finkel, Esq.**, of **Meissner, Kleinberg & Finkel, LLP.** 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, Health Care Fraud, in violation of 18 U.S.C. §1347, a Class C felony.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 2.

WITNESSES

For the Petitioner:

None

For the Respondent:

Isaac Barr, M.D.

Zinoviy Gutkovich, 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. **Isaac Barr, M.D.**, the Respondent, was authorized to practice medicine in New York State on June 27, 1996, by the issuance of license number 203370 by the New York State Education Department (Petitioner's Ex. 3).

2. On August 1, 2007, the Respondent was found guilty, based on a plea of guilty, of committing a crime under federal law, specifically, Health Care Fraud in violation of 18 U.S.C. §1347, a Class C felony. (Ex. 4)

3. For the above crime, the Respondent was sentenced to four (4) years probation, a \$25,000.00 forfeiture, \$62,000.00 in restitution and a \$100.00 assessment. (Ex. 4)

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, Health Care Fraud in violation of 18 U.S.C. §1347, a Class C felony.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was prosecuted in the United States District Court for the Eastern District of New York. It appears that the Respondent pled guilty to a crime, specifically, Health Care Fraud in violation of 18 U.S.C. §1347, a Class C felony. After this guilty plea, Respondent was sentenced to four (4) years probation, a \$25,000.00 forfeiture, \$62,000.00 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 June 27, 1996, by the issuance of license number 203370 by the New York State Education Department. At the hearing, the Petitioner presented thorough documentation establishing that the Respondent was charged with and pled guilty to a crime under federal law, specifically, Health Care Fraud, in violation of 18 U.S.C. §1347, a Class C felony. In an effort to lessen the penalty herein and to explain his client's conduct, the Respondent's attorney offered the testimony of a fellow physician, a psychiatrist, Dr. Zinoviy Gutkovich, who was also an emigrant from the former USSR.

This character witness plus the several testimonial letters presented at the hearing, Respondent's Exhibits # D through # H, show that the Respondent has the respect and admiration of his friends and colleagues. Dr. Gutkovich testified that the Respondent is a very good physician who makes himself available to his patients. Dr. Gutkovich recounted the story of how the respondent saved the life of a young patient through proper diagnosis and indicated that his own son is a patient of the Respondent. 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 Health Care fraud.

It appears that the Respondent pled guilty, in the U.S. District Court, Eastern District of New York, to one single count of Information, and this charge, Petitioner's Ex. 4, 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's attorney presented a letter from the prosecutor, Assistant U.S. Attorney Kleinberg, to the Judge (Ex. C) to establish the cooperation of the Respondent with the FBI. AUSA Kleinberg's letter does show that the Respondent cooperated with the prosecution and provided testimony and evidence against his co-defendants. With this cooperation of the Respondent, Dr. Ivanson pled guilty and was sentenced to probation of five years. According to the letter of AUSA Kleinberg, the criminal involvement of the Respondent was less serious than that of Dr. Ivanson and so, in Kleinberg's opinion, the Respondent's sentence should not be more serious than that of Dr. Ivanson. It should be noted that Dr. Ivanson's Federal sentence was five years of probation, while the respondent was given only four years. On restitution, Dr. Ivanson had to pay back some \$45,000 and the Respondent was obliged to pay back \$62,000 in restitution and suffer a \$25,000 forfeiture.

The Department's attorney, Mr. Bogan, disagreed with the conclusion of Mr. Kleinberg and pointed out that the Respondent was the owner and "gate-keeper" of the no-fault mill and it was the Respondent who first saw the "patients" and then referred them on to the other Doctors such as Dr. Ivanson. The Respondent's attorney countered that his client was only a "paper" owner and did not have actual control over the enterprise.

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.

Respondent indicated that he comes from the Ukraine in the former Soviet Union and that, due to anti-Semitism, he and his family emigrated to the United States in 1990. He indicated that that he had no prior disciplinary actions or mal-practice suits brought against him. As to the charge of fraud he indicated that he was naïve and, due to financial pressures, he made an error in judgment in getting involved with the charlatans who perpetrated the fraud. After a year of working in the no-fault mill, the Respondent suspected that there was fraud but he did nothing about it until the FBI approached him to cooperate in their investigation.

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. 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 presented the Determination and Order from a prior Direct Referral case, the matter of Andrew Ivanson, M.D. The decision in this matter was rendered last June. Dr. Ivanson was involved in the same No-Fault Fraud Mill as the Respondent. The results in that case were deemed relevant to this one and the Department's attorney did not object to the offer of this evidence and so the Determination in the matter of Ivanson were admitted into evidence as Respondent's Exhibit # 1.

In the Ivanson case the Order was that Dr. Ivanson's license to practice medicine in New York State was **suspended**, for a period of one year and, after the completion of this suspension, he was placed on a term of probation of five years. (See Ex. 1) The Panel was not bound by the Determination in Ivanson and based its determination on the facts presented for the matter of Doctor Barr. In reaching an appropriate sentence, the

panel looked to all the evidence and, in particular, at Exhibit 4 in the record which contains the transcript of the federal sentencing and in it the Respondent reveals his involvement in this enterprise in his own words:

“THE DEFENDANT: Between March 2001 and July 5 2003, I was the paper owner of a medical clinic known as Remsen Medical Services. During that time, Remsen mainly offered services to people who allegedly had been in automobile accidents. Remsen generated income by billing insurance companies on behalf of Remsen patients under what is commonly called no-fault. I knew that Remsen submitted fraudulent claims to no-fault insurers, many of which were paid. The claims were for services, testing, equipment, but were not necessary or were otherwise fraudulent.” (Ex. 4, page 27)

In his closing plea to the panel, the Respondent’s attorney argued that his client was simply naïve and a dupe of charlatans. The Respondent was said to be only a “paper” owner who did not understand American business practice. It was contended that he was a good and competent Doctor who should continue in solo practice. The Department’s attorney argued for Revocation and contended that the Respondent’s role was greater than that of Dr. Ivanson and that he got a better “deal” from the Federal Judge because he was the first to cooperate with the FBI.

The panel weighed all the evidence and testimony and appreciated the seriousness of the crime committed. The panel also saw a physician doing good work and did not want to take his license as there was no allegation of harm done to patients.

In determining an appropriate punishment the panel concluded, unanimously, that a stayed suspension was in order, coupled with a five-year probation. The probation should include education, especially ethics, and a financial monitoring to detect any future aberrant financial behavior.

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, and this suspension is **Stayed**.
3. The Respondent is placed on a term of **probation** of five years. The terms of the probation are attached hereto as Appendix 1 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: Albany, New York
December 8, 2009

Redacted Signature


Lyon M. Greenberg, M.D., Chairperson

Trevor A. Litchmore, M.D.
Mary Ann T. Cresanti, N.P

To:

Isaac Barr, M. D.
1048 Coney Island Avenue
Brooklyn, NY 11230

Richard A. Finkel, Esq.
Eisner, Kleinberg & Finkel
275 Madison – Suite 1000
New York, N.Y. 10016

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

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 shall submit annual accountings of the finances of his practice. This accounting shall be prepared by an auditor approved by of the Director of OPMC. In addition to general accounting of the finances of the practice the accounting shall alert the Director to any aberrant financial behavior or fraudulent billing practice and any such behavior or practice shall constitute a violation of this probation. The cost of this auditing and accounting shall be the responsibility of the Respondent.
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, at any time, by the Director of OPMC. This review may include, but shall not be limited to, a review of all financial records, office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.

7. Throughout the period of probation, the Respondent shall take such CME courses as approved and ordered by of the Director of OPMC. In the first two years of probation, the CME courses shall include courses in ethics, billing and risk management. The cost of this education shall be the responsibility of the Respondent.

APPENDIX 2



IN THE MATTER

OF

ISAAC BARR, M.D.
CO-08-09-6076-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ISAAC BARR, M.D.
1048 Coney Island Avenue
Brooklyn, NY 11230

ISAAC BARR, M.D.
Redacted Address

ISAAC BARR, M.D.
63-61 99TH Street
Suite G-1
Rego Park, NY 11374

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 24th day of September, 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. JAMES F. HORAN, ACTING 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.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here

Redacted Signature



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

August 13, 2009

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

ISAAC BARR, M.D.
CO-08-09-6076-A

STATEMENT

OF

CHARGES

ISAAC BARR, M.D., Respondent, was authorized to practice medicine in New York State on June 27, 1996, by the issuance of license number 203370 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 1, 2007, in the United States District Court, Eastern District of New York, Respondent was found guilty, based on a plea of guilty, of Health Care Fraud, in violation of 18 USC §§ 1347, a Class C felony, and on or about September 25, 2008, was sentenced, inter alia, to four (4) years probation and to forfeit \$25,000.00, all funds or other monetary instruments on deposit at HSBC Bank, account numbers 669895954 and 669972665, and held in the name of Remsen Medical Services, P.C. and beneficially owned by the defendant and all funds other monetary instruments on deposit at HSBC Bank, account numbers 669898686 and 669975656 and held in the name of Lenox Medical Services, P.C. and beneficially owned by the defendant (the "Forfeited Properties").

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 13*, 2009
Albany, New York

Redacted Signature

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