



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

PUBLIC

October 22, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Leonid A. Vorobyev, M.D.

Redacted Address

Inna Fershteyn, Esq.
8622 Bay Parkway – Suite 2C
Brooklyn, New York 11214

Peter D. Van Buren, Esq.
NYS Department of Health
ESP – Corning Tower – Room 2509
Albany, New York 12237

RE: In the Matter of Leonid A. Vorobyev, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-202) 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

IN THE MATTER
OF
LEONID A. VOROBYEV, M.D.

DETERMINATION
AND
ORDER

BPMC #10-202

COPY

A hearing was held on September 23, 2010, 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 June 14, 2010, were served upon the Respondent, **Leonid A. Vorobyev, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon Greenberg, M.D., Chair, John D. Thomas, II, M.D., and Janet M. Miller, R.N.,** 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 G. Conway, Esq.,** General Counsel, by **Robert Bogan, Esq.,** of Counsel. The Respondent appeared with counsel, **Inna Fershteyn, Esq.,** of Brooklyn, New York.

Evidence was received and a transcript of these proceedings was 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)(i) by having been found guilty, based on a plea of guilty, in Brooklyn Criminal Court, to attempted grand larceny in the fourth degree, in violation of New York Penal Law §§110 and 155.30, a class A misdemeanor. On February 20, 2008, the Respondent was sentenced to three (3) years probation, a \$20.00 CVAF¹ and a \$140.00 surcharge. 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:

Leonid A. Vorobyev, M.D.

Marnia Moshkovich, M.D.

Redacted

Martin Orenshteyn, M.D.

¹ The New York Crime Victim Assistance Fee surcharge.

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. **Leonid A. Vorobyev, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 4, 2000, by the issuance of license number 216549 by the New York State Education Department. (Petitioner's Ex. 4)

2. The Respondent, on September 29, 2006, pled guilty, in Brooklyn Criminal Court to attempted grand larceny in the fourth degree, in violation of New York Penal Law §§110 and 155.30, a class A misdemeanor, and, on February 20, 2008, was sentenced to three (3) years probation, a \$20.00 CVAF and a \$140.00 surcharge. (Petitioner's Ex. 5)

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(i) by being convicted of an act constituting a crime under New York State law, to wit attempted grand larceny in the fourth degree, in violation of New York Penal Law §§ 110 and 155.30, a class A misdemeanor.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case shows that the Respondent was authorized to practice medicine in New York State on January 4, 2000, by the issuance of license number 216549 by the New York State Education Department.

The Respondent testified on his own behalf and did not deny the fact that he pled guilty, in Brooklyn Criminal Court, to attempted grand larceny in the fourth degree, in violation of New York Penal Law §§ 110 and 155.30, a class A misdemeanor. It appears from the record that, on February 20, 2008, Respondent was sentenced to three (3) years probation, a \$20.00 CVAF and a \$140.00 surcharge

The panel was impressed with the frankness and integrity of the respondent. It was also noted that there have been no claims of direct patient harm and that there have been no standard of care issues directed against him in any State. The record shows that no allegation about his clinical competency or skill has ever been directed against him.

It was also noted that the Department's attorney did not ask for revocation. The panel was of the opinion, unanimously, that revocation would be excessive in view of all the circumstances in this case. The panel determined that the Respondent should be censured and reprimanded for his actions. The panel decided that the people of New York would be adequately protected by such a punishment. The panel was unanimous in its decision that such a penalty would suffice to protect the people of the State of New York.

The hearing committee was impressed by the Respondent's character witnesses and by the good work that the Respondent has been doing in the Brooklyn Russian community. The many letters submitted in support of the Respondent show that he is regarded as a man of high

moral character and genuine concern for his patients. It appears that he treats many patients without charge and his Rabbi wrote a letter praising his contributions to the community. It was also noted that a restriction on his license could have dire consequences for the mental condition of many of the Respondent's patients, some of whom are suicidal. Nevertheless the panel recognized that by pleading guilty to a misdemeanor the Respondent had, by definition, committed professional misconduct and thus a sanction was in order.

As to the penalty, the Department's attorney had requested a Censure and Reprimand plus a \$10,000 fine. The Hearing Committee determined, unanimously, that such a penalty would be excessive and the people of New York State would be protected by a Censure and Reprimand and no fine, taking into account the fact that the Respondent had already paid a large sum in legal fees, restitution, and fines, totaling \$172,000.00. The record shows that these monies were paid to attorneys to enter his guilty plea in Brooklyn Criminal Court and negotiate with the Office of the Medicaid Inspector General. (Exhibit F) The panel considered all the available penalties and concluded that the Respondent had paid for his crime and that any additional punishment, beyond the Censure and Reprimand, was not warranted under all the facts and circumstances of this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is SUSTAINED.

2. The Respondent is censured and reprimanded for conduct resulting in the guilty plea in the criminal case in Brooklyn, which would constitute misconduct under the laws of New York State.
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: Albany, New York
October 21, 2010

Redacted Signature

Lyon Greenberg, M.D., Chair

John D. Thomas, II, M.D.
Janet M. Miller, R.N

TO: Leonid A. Vorobyev, M.D.

Redacted Address

Inna Fershteyn, Esq.
Attorney for Respondent
8622 Bay Parkway, Suite 2C
Brooklyn, NY 11214

Peter D. Van Buren, Esq.
Attorney for Petitioner
Deputy Counsel
Attorney for Petitioner
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
LEONID A. VOROBYEV, M.D.
CO-08-02-0730-A

NOTICE OF
REFERRAL
PROCEEDING

TO: LEONID A. VOROBYEV, 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 19th day of August, 2010, 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, that 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 and/or sworn testimony on your behalf. Such evidence and/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 that 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 (10) 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 (10) 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 (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) 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 demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here



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 (5) 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

June 14, 2010

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
LEONID A. VOROBYEV, M.D.
CO-08-02-0730-A

STATEMENT
OF
CHARGES

LEONID A. VOROBYEV, M.D., Respondent, was authorized to practice medicine in New York state on January 4, 2000, by the issuance of license number 216549 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 29, 2006, in the Criminal Court of the City of New York, County of Kings, New York, Respondent was found guilty, based on a plea of guilty, of attempted grand larceny in the fourth degree, in violation of New York Penal Law §§110 and 155.30, a class A misdemeanor, and on or about February 20, 2008, was sentenced to three (3) years probation, a \$20.00 CVAF and a \$140.00 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: *June 14*, 2010
Albany, New York

Redacted Signature

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