

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

October 28, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude B. Mulvey, Esq.
NYS Department of Health
ESP – Corning Tower – Room 2512
Albany, New York 12237

Rafal A. Al Badri, M.D.
REDACTED ADDRESS

Rafal A. Al Badri, M.D.
REDACTED ADDRESS

Rafal A. Al Badri, M.D.
14100 Cedar Road, Suite 350
University Heights, Ohio 44121

RE: In the Matter of Rafal A. Al Badri, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-259) 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., Chief 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
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
RAFAL A. AL BADRI, M.D.
CO-09-12-8091-A

DETERMINATION
AND
ORDER
BPMC #11-259

COPY

A hearing was held on September 15, 2011, 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 March 14, 2011, were served upon the Respondent, **Rafal A. Al Badri, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Virginia R. Marty**, Chair, **Mohammad-Reza Ghazi-Moghadam, M.D.**, and **Arsenio Agopovich, M.D.**, 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 **James E. Dering, Esq.**, General Counsel, by **Jude B. Mulvey, Esq.**, of Counsel. The Respondent, **Rafal A. Al Badri, M.D.**, did not appear, although duly served. 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 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 §6530(9)(b) – by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state and pursuant to Education Law §6530(9)(d) for having his license revoked by the State of Ohio where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

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: None

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. **Rafal A. Al Badri, M.D.**, the Respondent, did not appear at the hearing although duly served and notified of the hearing on April 20, 2011. (Petitioner's Exhibit 2.)
2. **Rafal A. Al Badri, M.D.**, the Respondent, was authorized to practice medicine in New York State on February 26, 1990, by the issuance of license number 181584 by the New York State Education Department (Petitioner's Ex. 3).
3. On or about October 14, 2009, the State Medical Board of Ohio (hereinafter "Ohio Board"), by a Decision (hereinafter "Ohio Decision"), revoked Respondent's license to practice medicine, based on his failure to conform to acceptable standards of care, controlled substance violations and failure to maintain adequate records. Respondent's revocation of his medical license was stayed and was indefinitely suspended for not less than six (6) months with conditions including, but not limited

to, a 5 year term of probation, a practice supervisor, continuing medical education, practice monitor and permanent limitation on his license prohibiting Respondent from prescribing controlled substances for weight loss.

4. The conduct resulting in the Ohio 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 State Education Law §6530(3) (practicing the profession with negligence on more than one occasion); and/or
2. New York State Education Law §6530(32) (failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

“Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state...”

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked and/or suspended by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation/suspension would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Respondent..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Officer, after considering the documentary evidence, which included evidence of the several attempts at contacting and serving the Respondent (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for due diligence in the service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence.

The record in this case indicates that on or about October 14, 2009, the State Medical Board of Ohio by a Decision revoked Respondent's license to practice medicine based on his failure to conform to acceptable standards of care, controlled substance violations and failure to maintain adequate records. The record submitted by the Department at the hearing goes on to show that Respondent's revocation of his medical

license was stayed and he was indefinitely suspended for not less than six (6) months with conditions including, but not limited to, a 5 year term of probation, a practice supervisor, continuing medical education, practice monitor and permanent limitation on his license prohibiting Respondent from prescribing controlled substances for weight loss.

The panel was unanimous in finding that the actions of the Respondent warranted revocation of the Respondent's New York license as the only appropriate protection for New York patients.

Respondent did not appear at the hearing, and the record does not contain any evidence of mitigating circumstances or remorse. The panel based its determination on the documentation in the record. The panel considered the full range of penalties available and was unanimous that revocation would be the proper penalty. Accordingly, as to the penalty to be imposed, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license.

ORDER

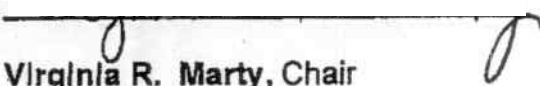
IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are SUSTAINED
2. The license of the Respondent to practice medicine in New York State is revoked.
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: Marcellus, New York

October 26, 2011

REDACTED SIGNATURE


Virginia R. Marty, Chair

**Mohammad-Reza Ghazi-Moghadam, M.D.
Arsenio Agopovich, M.D.,**

To:

Jude B. Mulvey, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

Rafal A. Al Badri, M.D.
REDACTED ADDRESS

Rafal A. Al Badri, M.D.
REDACTED ADDRESS

Rafal A. Al Badri, M.D.
14100 Cedar Road, Suite 350
University Heights, OH 44121

APPENDIX I

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

IN THE MATTER
OF
RAFAL A. AL BADRI, M.D.
CO-09-12-8091-A

STATEMENT
OF
CHARGES

RAFAL A. AL BADRI, M.D., Respondent, was authorized to practice medicine in New York State on February 26, 1990, by the issuance of license number 181584 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 14, 2009, the State Medical Board of Ohio (hereinafter "Ohio Board"), by a Decision (hereinafter "Ohio Decision"), revoked Respondent's license to practice medicine, based on his failure to conform to acceptable standards of care, controlled substance violations and failure to maintain adequate records. Respondent's revocation of his medical license was stayed and was indefinitely suspended for not less than six (6) months with conditions including, but not limited to, a 5 year term of probation, a practice supervisor, continuing medical education, practice monitor and permanent limitation on his license prohibiting Respondent from prescribing controlled substances for weight loss.

B. The conduct resulting in the Ohio 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 State Education Law §6530(3) (practicing the profession with negligence on more than one occasion); and/or
2. New York State Education Law §6530(32) (failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state, where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and B, B and B.1 and/or B and B.2.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked and/or suspended by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation and/or suspension would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

2. The facts in Paragraphs A and B, B and B.1 and/or B and B.2.

DATED: *March 14*, 2011
Albany, New York

REDACTED SIGNATURE

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

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

IN THE MATTER
OF

RAFAL A. AL BADRI, M.D.
CO-09-12-8091-A

NOTICE OF
REFERRAL
PROCEEDING

TO: RAFAL A. AL BADRI, M.D.
REDACTED ADDRESS

RAFAL A. AL BADRI, M.D.
14100 Cedar Road
Suite 350
University Heights, OH 44121

RAFAL A. AL BADRI, 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 23rd day of June, 2011, 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
March 14, 2011

REDACTED SIGNATURE

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

Inquiries should be addressed to:

Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282