

PUBLIC

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

April 10, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rita Dave, Esq.
26 Court Street – Suite 1212
Brooklyn, New York 11242

Joel Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Shashibala Soni, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-71) 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., 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

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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

Shashibala Soni, M.D.
a/k/a Shashibala Sehgal (Respondent)

Determination and Order No. 12-71

COPY

Eleanor C. Kane, M.D. (Chair), William A. Tedesco, M.D. and David F. Irvine, DHSc, RPA-C, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to New York Public Health Law (PHL) §§230(10)(e) & 230(10)(p)(McKinney Supp. 2012). James F. Horan, Administrative Law Judge, served as the Committee's Administrative Officer. The Department of Health (Petitioner) appeared by Joel Abelow, Esq. The Respondent appeared by Rita Dave, Esq. The Committee reviewed documents and testimony and heard arguments from both parties. A stenographic reporter prepared a transcript of the proceeding. After consideration of the record, the Hearing Committee sustains the charges that the Respondent's Federal conviction for income tax evasion and the Respondent's failure to provide access to patient information constitute professional misconduct. The Committee votes 3-0 to limit the Respondent's license to practice medicine in New York State (License) to practice in a State or federally licensed health care facility, under direct medical supervision.

Background

The State Board for Professional Medical Conduct (BPMC) functions pursuant to PHL §230 *et seq.* as a duly authorized professional disciplinary agency of the State of New York.

The Petitioner brought this case before BPMC pursuant to PHL §230(10)(p), which provides an expedited hearing (Referral Proceeding) for charges alleging a violation under New York Education Law (EL) §§6530(9)(a)(ii)(McKinney Supp. 2011). That statute defines professional misconduct to include engaging in conduct that results in a Federal criminal conviction. In a Referral Proceeding, the statute limits the Committee to determining whether the criminal conviction occurred, whether to impose a penalty against the New York license and, if so, the nature and severity for the penalty against the license, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). The Petitioner also charged that the Respondent engaged in professional misconduct under the definition in EL § 6530(40) by failing to provide access to patient information under the requirements at PHL § 18. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as the Appendix.

At the beginning of the hearing, the Committee's Administrative Officer accepted 13 documents into the hearing record from the Petitioner: the Notice of Referral Proceeding, Statement of Charges and Affidavit of Service [Exs. 1-3], a New York State Education Department document relating to the Respondent's New York Licensure [Ex. 4], copies of documents from the United States District Court relating to Respondent's indictment and conviction [Exs. 5-6], a photocopy of Title 18 USC § 371 [Ex. 7], letters from Patients A-D to the Respondent, Lisa Saunders and/or the Office for Professional Medical Conduct [Exs. 8-11] and letters relating to the proceeding and a copy of a Report of Interview [Exs. 12-13]. The Respondent offered no exhibits into the record. The record from the hearing also included the hearing transcript, pages 1-89. The record in the proceeding closed when the Administrative Officer received the transcript on March 1, 2012.

Witnesses

For the Petitioner:

REDACTED

For the Respondent:

Shashibala Soni Sehgal, M.D.

Findings of Fact

The Committee made the following Findings of Fact after reviewing the entire record in this matter. The brackets following the Findings cite to exhibits in the record [Ex.] or testimony from the hearing [T] that the Committee found persuasive in arriving at a particular finding. In instances in which other information in the record conflicts with the evidence on which the Committee relied in making the Findings, the Committee considered and rejected that other information. Under PHL § 230(10), the Petitioner bore the burden to prove its case by a preponderance of the evidence. The Committee agrees unanimously on all Findings.

1. The Respondent received her License (# 128754) from the New York State Education Department on September 24, 1976 [Ex. 4].
2. The Respondent maintained medical offices in Brooklyn and Manhattan, among other locations [Ex. 6].
3. The Respondent was found guilty following trial, in the United States District Court for the Eastern District of New York, for conspiracy to defraud the United States, a criminal offense under Title 18 USC § 371 [Ex. 5].

4. The District Court sentenced the defendant to 51 months imprisonment, with credit for time served, and to pay restitution to the United States Internal Revenue Service totaling \$1,587,882.00 [Ex. 5].
5. Patient A requested a copy of his medical records from the Respondent in October 2008 and the Patient had yet to receive copies of the records as of the date of this hearing [Ex 8; T 11-16].
6. Patient B requested a copy of her medical records from the Respondent in January 2009 and the Patient had yet to receive copies of the records as of the date of this hearing [Ex. 9; T 11-16].
7. Patient C requested a copy of her medical records from the Respondent in June 2009 and had yet to receive copies of the records as of the date of this hearing [Ex 10; T 11-16].
8. Patient D has attempted to obtain a copy of her medical records from the Respondent, without success as of the date of this hearing [Ex. 11; T 11-16].

Hearing Committee Conclusions

The testimony from **REDACTED** [T 11-16] and letters in evidence from Patients A-D demonstrated that the Respondent failed to provide Patients A-D with copies of the Patients' medical records with the Respondent upon the Patients' requests. The Committee sustains the allegations in the Second through Fifth Specifications of Misconduct. The Respondent's failure to provide access to the Patients' records constituted professional misconduct under EL §6530(40) and constituted a violation under PHL § 18. The violations, however, occurred during the Respondent's Federal incarceration and evidence from the Respondent at the hearing satisfies

the Committee that the Respondent is addressing this matter and that the Patients will obtain their records. The Committee declines to impose a penalty on the records access violations.

Further evidence at the hearing [Ex. 5 & Ex. 6] proved that the Respondent was convicted of conspiracy to defraud the United States and was sentenced to incarceration and restitution. The charges underlying the conviction alleged that the Respondent conspired with others to conceal her income from the IRS. Engaging in conduct that results in a Federal criminal conviction constitutes professional misconduct under EL § 6530(9)(a)(ii). The Committee sustains the First Misconduct Specification. The Petitioner asked the Committee to revoke the Respondent's License due to the conviction. The Respondent argued that other persons were running her life and making her financial decisions and that the criminal conviction resulted from the control that others exerted over the Respondent. The Respondent asked to retain her License and offered to accept whatever conditions on the Respondent's practice that the Committee thought appropriate.

Determination On Penalty

The Committee votes 3-0 to limit the Respondent's License pursuant to PHL § 230-a(3) to practice under immediate medical supervision, in a medical facility licensed or operated by New York State or the United States governments (such as a hospital holding licensure under PHL Article 28 or a hospital operated by the United States Veteran's Administration).

The Committee rejected the request for revocation for two reasons. First, there was no allegation concerning the Respondent's skills and knowledge as a physician. Second, the District Court imposed a severe enough sanction against the Respondent for her criminal

conduct. The Respondent was convicted for serious criminal conduct, but she received a heavy sentence that included imprisonment and that requires the Respondent to provide restitution to the Federal Government.

The Committee voted to limit the Respondent's practice to remove her from private practice and from any concerns over managing an office or billing for services. The Respondent admitted that she gave other persons control over her financial affairs and that admission raised serious concerns among the Committee over the Respondent's judgment in financial matters. The limitation will restrict the Respondent to hospitals or other regulated health care institutions, with established lines of supervision, and allow the Respondent to concentrate on providing patient care.

ORDER

Based on the foregoing, the Committee issues the following ORDER:

1. The Committee sustains the First through Fifth Specifications of Misconduct contained in the Statement of Charges [Ex. 2];
2. The Committee limits the Respondent's License to practice in a government licensed or operated healthcare facility, under direct medical supervision.

DATED: *April 8*, New York
2012

REDACTED

Eleanor C. Kane, M.D. (Chair),
William A. Tedesco, M.D.,
David F. Irvine, DHSc, RPA-C

TO: Rita Dave, Esq.
26 Court Street, Suite 1212
Brooklyn, NY 11242

Joel Ablove, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237

Appendix

Statement of Charges (attached)

IN THE MATTER

OF

SHASHIBALA SONI, M.D.
aka SHASHIBALA SEHGAL, M.D.
aka SHASHIBALLA PRAVINKUMAR SEHGAL, M.D.
aka SHASHIBALA JAITLEY, M.D.
CO-11-01-0024-A

NOTICE OF
REFERRAL
PROCEEDING

TO: SHASHIBALA SONI, M.D.
aka SHASHIBALA SEHGAL, M.D.
aka SHASHIBALLA PRAVINKUMAR SEHGAL, M.D.
aka SHASHIBALA JAITLEY, M.D.
Register #27512-050
FPC Alderson
Glen Ray Rd.
Box A
Alderson, WV 24910

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 25th day of August 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 you. 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

RZ

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

July 6, 2011

REDACTED

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

Inquiries should be addressed to:

Richard J. Zahnleuter
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER

OF

SHASHIBALA SONI, M.D.

aka SHASHIBALA SEHGAL, M.D.

aka SHASHIBALLA PRAVINKUMAR SEHGAL, M.D.

aka SHASHIBALA JAITLEY, M.D.

CO-11-01-0024-A

AMENDED
STATEMENT
OF
CHARGES

SHASHIBALA SONI, M.D. aka SHASHIBALA SEHGAL, M.D. aka SHASHIBALLA PRAVINKUMAR SEHGAL, M.D. aka SHASHIBALA JAITLEY, M.D., Respondent, was authorized to practice medicine in New York State on September 24, 1976, by the issuance of license number 128754 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 3, 2010, in the United States District Court, Eastern District of New York, Respondent was convicted, after a plea of not guilty and a trial, of Conspiracy to Defraud the United States, in violation of 18 USC §371 (a felony), and was sentenced to 51 months imprisonment, 3 years thereafter supervised release including "full financial disclosure to the Probation Department," \$1,587,882.00 restitution to the Internal Revenue Service, and \$100.00 in assessments, based on Respondent having conspired "to conceal [Respondent's] income from the IRS" after Respondent "received monetary compensation from private and government health care insurance providers for medical services that she provided to her patients."

B. The following patients, in the time frame between 2008 and the present, attempted to obtain their medical records from Respondent, but Respondent failed to provide the patients with access to their medical records:

1. Patient A.
2. Patient B.
3. Patient C.
4. Patient D.¹

¹ Patients A, B, C, and D are identified in Appendix A, attached for appropriate recipients.

SPECIFICATIONS OF MISCONDUCT

FIRST 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.

SECOND THROUGH FIFTH SPECIFICATIONS

FAILING TO PROVIDE ACCESS TO PATIENT INFORMATION

Respondent is charged with committing professional misconduct as defined in New York Education Law §6530(40) by failing to provide access to patient information in accordance with the standards set forth in §18 of the Public Health Law, as added by Chapter 497 of the Laws of 1986, in that Petitioner charges:

2. The facts in Paragraph B and B.1,
3. The facts in Paragraph B and B.2.
4. The facts in Paragraph B and B.3.
5. The facts in Paragraph B and B.4.

DATED: *August 12*, 2011
Albany, New York

REDACTED

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