

NEW YORK
state department of
HEALTH

Public

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

Sue Kelly
Executive Deputy Commissioner

July 20, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rey Bello, M.D.
REDACTED

Bruce Rosenberg, Esq.
Rosenberg Law, P.C.
212 Pettit Avenue
Bellmore, New York 11710

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

RE: In the Matter of Rey Bello, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-145) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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

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
REY BELLO, M.D.**

**DETERMINATION
AND
ORDER**
BPMC 12-145

COPY

A hearing was held on May 16, 2012, 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 February 21, 2012, were served upon the Respondent, **REY BELLO, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Jacqueline H. Grogan, Ed.D., Chair, Andrew J. Merritt, M.D., and Ralph W. Liebling, 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, and by **Joel E. Abelove, Esq.**, of Counsel. The Respondent, **Rey Bello, M.D.**, did appear, with counsel, **Bruce Rosenberg, Esq.**, of Bellmore, 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 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 New York Education Law §6530(9) (b) by having been found guilty of improper professional practice or professional misconduct by a duly 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

The Respondent is also charged with professional misconduct pursuant to New York Education Law §6530(9) (d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action 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:

Rey Bello, 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 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. Rey Bello, M.D., the Respondent, did appear at the hearing with counsel and was duly served with process. (Petitioner's Exhibit 2)
2. The Respondent was authorized to practice medicine in New York State on September 18, 1997, by the issuance of license number 208336 by the New York State Education Department. (Petitioner's Exhibit 3)
3. On or about January 11, 2011, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, (hereinafter "New Jersey Board"), by a Final Order (hereinafter "New Jersey Order"), *inter alia*, ordered Respondent to permanently surrender his license to practice medicine and surgery, pay costs and penalties of \$29,327.00, based on Respondent

performing unnecessary testing, incompetent performance and interpretation of such testing, billing for tests not performed, referring patients to his self-owned surgical center, making false statements to the New Jersey Board, and failing to maintain required CME.

4. The conduct resulting in the New Jersey 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 Education Law §6530(2) (practicing the profession fraudulently).
2. New York Education Law §6530(5) (Incompetence on more than one occasion).
3. New York Education Law §6530(24) (performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform).
4. New York Education Law §6530(35) (ordering excessive tests, treatment or use of treatment facilities not warranted by the condition of the patient).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law §6530(9) 9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly 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 State Education Law §6530 (9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel. There was no dispute about jurisdiction.

The record in this case indicates that Respondent was ordered to permanently surrender his license to practice medicine in the state of New Jersey based on Respondent performing unnecessary testing, incompetent surgery performance and interpretation of such testing, billing for tests not performed, referring patients to his self-owned surgical center, making false statements to the New Jersey Board, and failing to maintain required CME.

The record goes on to show that the Respondent was also ordered to pay costs and penalties of \$29,327.00 for these offenses.

The Department contended that the Respondent's license should be revoked (T. 29) because of the serious nature of his offense. The Respondent's attorney contended that the Respondent was a good candidate for rehabilitation and should be given that chance. (T. 24 *et seq.*) The Respondent's attorney argued that there was no medical misconduct as the Respondent agreed to the consent order in New Jersey and did not contest the charges. This argument was rejected as the imposition of the discipline alone constitutes misconduct in this state. If the Respondent wishes to contest the underlying charges, he will have to do that in New Jersey as New York will not relitigate such a matter in a referral proceeding.

The panel weighed all the arguments and noted Respondent's remorse appeared to be genuine. The panel found that the Respondent has not practiced since 2009 and one of the charges from New Jersey was a failure to keep current with medical education. Because of this fact, the panel determined that the Respondent must satisfy New York of his competence before he resumes practice in New York. The panel felt that the Respondent's actions did not warrant revocation under the circumstances of this case. For a penalty, the panel decided, unanimously, that the Respondent should suffer an indefinite suspension until such time as he is fully reinstated to the practice of medicine in New Jersey and be required, thereafter, to demonstrate to OPMC that he is indeed qualified and fit and competent to practice medicine in his chosen field.

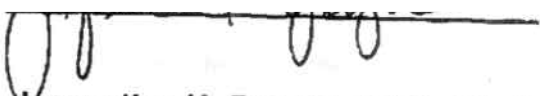
ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is suspended until such time as he is fully reinstated to the practice of medicine by the State of New Jersey.
2. Before returning to practice, the Respondent must demonstrate to the satisfaction of OPMC his competency to practice medicine in his chosen field.
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: Bayside, New York
June _____, 2012
July 19, 2012

REDACTED


Jacqueline H. Grogan, Ed.D., Chair

Andrew J. Merritt, M.D.,
Ralph W. Liebling, M.D.

To:

Rey Bello, M.D.
Respondent

REDACTED

Bruce Rosenberg, Esq., Attorney for Respondent
Rosenberg Law, P.C.
212 Pettit Avenue
Bellmore, New York, New York 11710

Joel Abelove, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER

OF

REY BELLO, M.D.
CO-11-02-1055-ANOTICE OF
REFERRAL
PROCEEDINGTO: Rev Bello, M.D.
REDACTED**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 18th day of April, 2012, at 10:30 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
February 21, 2012

REDACTED

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

Inquiries should be addressed to:

JOEL E. ABELOVE
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
REY BELLO, M.D.
CO-11-02-1055-A

STATEMENT
OF
CHARGES

REY BELLO, M.D., Respondent, was authorized to practice medicine in New York state on September 18, 1997, by the issuance of license number 208336 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 11, 2011, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, (hereinafter "New Jersey Board"), by a Final Order (hereinafter "New Jersey Order"), inter alia, ordered Respondent to permanently surrender his license to practice medicine and surgery, pay costs and penalties of \$29,327.00, based on Respondent performing unnecessary testing, incompetent performance and interpretation of such testing, billing for tests not performed, referring patients to his self-owned surgical center, making false statements to the New Jersey Board, and failing to maintain required CME.

B. The conduct resulting in the New Jersey 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 Education Law §6530(2) (practicing the profession fraudulently).
2. New York Education Law §6530(5) (incompetence on more than one occasion).
3. New York Education Law §6530(24) (performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform).

4. New York Education Law §6530(35) (ordering excessive tests, treatment or use of treatment facilities not warranted by the condition 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 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/or B.

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530 (9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action 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/or B.

DATED: *February 21*, 2012
Albany, New York

REDACTED

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