

**NEW YORK**  
state department of  
**HEALTH**

Public

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

Sue Kelly  
Executive Deputy Commissioner

November 14, 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Muhammad Akhtar, M.D.  
REDACTED

**RE: In the Matter of Muhammad Akhtar, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 12-242) 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  
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

-----X  
IN THE MATTER

OF

MUHAMMAD AKHTAR, M.D.  
CO-11-02-0610-A

: DETERMINATION

: AND

: ORDER

-----X  
BPMC #12-242

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated July 18, 2012, were served upon the Respondent, Muhammad Akhtar, M.D. **IRVING S. CAPLAN (Chair), ELISA E. BURNS, M.D., and LELAND DEANE, M.D., M.B.A.,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Joel E. Abelow, Esq., Associate Counsel. The Respondent appeared, by telephone conference call. A hearing was held on October 17, 2012. Evidence was received and witnesses sworn and heard 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 where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b), §6530(9)(d) and §6530(9)(a)(iii). A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Muhammad Akhtar, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on March 27, 1998 by the issuance of license number 209940 by the New York State Education Department. (Exhibit #3).

2. On or about February 19, 2010, in the State of Ohio, Franklin County Municipal Court, Respondent pled nolo contendere to one count of theft by deception, a misdemeanor, in violation of Ohio Revised Code ("O.R.C.") §2913.02(A)(3). He was sentenced to pay a fine of \$250.00. (Exhibit #4).

3. On or about February 9, 2011, the State Medical Board of Ohio (the "Ohio Board"), by Consent Agreement, revoked Respondent's certificate to practice medicine and surgery, stayed the revocation, suspended the certificate for 270 days, and imposed 5 years of probation, based upon the criminal conviction. (Exhibit #5).

4. On or about May 24, 2011, the Commonwealth of Pennsylvania State Board of Medicine (the "Pennsylvania Board"), by Consent Agreement, suspended Respondent's license to practice medicine and surgery, based on the Ohio Consent Agreement as set forth in Paragraph 3, above. Respondent's Pennsylvania license suspension shall coincide with the Ohio suspension, and will be placed on probation during the period of probation in Ohio.

(Exhibit #6).

5. By an Order entered April 3, 2012, the Franklin County Municipal Court, Columbus Ohio, ordered all records pertaining to Respondent's criminal conviction sealed, and all index references to the case deleted, pursuant to O.R.C. §2953.32. (Exhibit A).

6. O.R.C. §2953.32 provides, in pertinent part, that a first offender may apply to the sentencing court to have the records of their conviction sealed. Before granting such a request, the sentencing court must determine that certain terms and conditions have been met. In particular, the court must determine that the rehabilitation of an applicant has been attained to the satisfaction of the court. The Court shall then "order all official records pertaining to the case sealed and..all index references to the case deleted and.. shall dismiss the charges in the case. The proceedings in the case shall be considered not to have occurred, and the conviction...shall be sealed." (Emphasis supplied).

#### CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence established that Respondent originally pled

no contest to a misdemeanor charge theft and was required to pay a \$250.00 fine in satisfaction of that charge. Both the Ohio and Pennsylvania Boards then disciplined Respondent based upon the conviction.

However, the record further established that the Ohio Court has effectively expunged the record of the conviction. Under Ohio law, the conviction is now deemed to have never occurred. Accordingly, there is no longer a criminal conviction upon which this Board may act. Given that the actions by our sister state Boards were predicated on the now sealed conviction, we further decline to impose discipline based on those actions.

#### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that no action should be taken against Respondent's license to practice medicine in New York State and that this matter should be dismissed.

#### ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First and Second and Third Specifications of professional misconduct, as set forth in the Statement of Charges

(Exhibit # 1) are DISMISSED;

2. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York  
10-30 2012

REDACTED

~~IRVING S. CAPLAN (CHAIR)~~

ELISA E. BURNS, M.D.  
LELAND DEANE, M.D., M.B.A.

TO: Joel E. Ablove, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower - Room 2512  
Albany, New York 12237

Muhammad Akhtar, M.D.

REDACTED

**APPENDIX I**

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

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IN THE MATTER  
OF  
MUHAMMAD AKHTAR, M.D.  
CO-11-02-0610-A

STATEMENT  
OF  
CHARGES

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MUHAMMAD AKHTAR, M.D., Respondent, was authorized to practice medicine in New York state on March 27, 1998, by the issuance of license number 209940 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about February 19, 2010, in the State of Ohio, Franklin County Municipal Court, Respondent pled nolo contendere to one (1) count of Theft by Deception, a misdemeanor, in violation of §2913.02(A)(3) of the Ohio Revised Code, and sentenced to a \$250.00 fine.

B. On or about February 9, 2011, the State Medical Board of Ohio (hereinafter "Ohio Board"), by Consent Agreement, revoked Respondent's certificate to practice medicine and surgery, stayed the revocation, suspended Respondent's certificate for 270 days, 5 year probation with terms, pursuant to Section 4731.22(B)(8), (11), (13) and (25) Ohio Revised Code, based on his conviction as set forth in Paragraph A, above.

C. On or about May 24, 2011, the Commonwealth of Pennsylvania State Board of Medicine (hereinafter "Pennsylvania Board"), by Consent Agreement, suspended Respondent's license to practice medicine and surgery, pursuant to Section 41(3) of the Medical Practice Act of December 20, 1985, 63 P.S. §422.41(4), based on his Ohio Consent Agreement as set forth in Paragraph B, above. Respondent's license suspension shall coincide with his Ohio license suspension, and Respondent's license shall be placed on probation during the period of probation in Ohio.

D. The conduct resulting in the Ohio and Pennsylvania Board disciplinary actions 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(9)(a)(iii) (being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law.

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

#### **SECOND 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:

2. The facts in Paragraphs A and/or B and/or C and/or D.

#### **THIRD SPECIFICATION**

Respondent violated 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, in that Petitioner charges:

3. The facts in Paragraphs A and/or B and/or C and/or D.

DATED: *July 18*, 2012  
Albany, New York

REDACTED

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