

March 6, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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Kern, Augustine, Conroy & Schoppmann, P.C.
Suite 200 South
865 Merrick Avenue
Westbury, New York 11590

Shams Qureshi, M.D.
REDACTED

RE: In the Matter of Shams Qureshi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-63) 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 : DETERMINATION
OF : AND
SHAMS QURESHI, M.D. : ORDER
CO-12-03-1026-A :
-----X

BPMC #13-63

COPY

A Commissioner's Order, Notice of Referral Proceeding and Statement of Charges, dated September 13, 2012, were served upon the Respondent, Shams Qureshi, M.D. **TREVOR A. LITCHMORE, M.D. (Chair), JANET M. MILLER, R.N., and REID T. MULLER, M.D.,** 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. Abelove, Esq., Associate Counsel. The Respondent appeared by Kern Augustine Conroy & Schoppmann, P.C., Daniel G. Giaquinto, Esq., and Lawrence F. Kobak, Esq., of Counsel. A hearing was held on January 24, 2013. 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)(a)(iii), by being convicted of a crime under the law of another jurisdiction for conduct which would constitute professional misconduct if occurring in New York. Respondent is also charged with professional misconduct pursuant to Education Law §6530(9)(b) and §6530(9)(d), relating to disciplinary action by the New Jersey State Board of Medical Examiners. 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. Shams Qureshi, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on July 28, 1997 by the issuance of license number 171182 by the New York State Education Department. (Exhibit #4).

2. On or about January 11, 2010, in the Superior Court of New Jersey, Passaic County, Respondent was convicted upon a plea of guilty of Recklessly Committing Health Care Claims Fraud in the Third Degree, in violation of N.J.S.A 2C:21-4.3(a). On August 20, 2010, Respondent was sentenced to two (2) years of probation, home confinement for the first three months of the probationary term, a one year suspension of his medical license and \$155.00 in fees and penalties. (Exhibit #5).

3. On or about September 19, 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 consent Order ("New Jersey Order"),

suspended Respondent's medical license for two years, required Respondent to appear before a Committee of the Board and demonstrate that he is fit and competent prior to reinstatement, permanently barred Respondent from performing prolotherapy, and assessed fees of \$100,000.00, based upon Respondent engaging in gross negligence, insurance fraud, and falsification of patient records. (Exhibit #6).

4. In addition to finding that Respondent's criminal conviction provided a basis for disciplinary action, the New Jersey Board also found that Respondent's care and treatment of two patients constituted acts of gross negligence and/or multiple acts of negligence. (Exhibit #6).

5. By a Consent Order of Reinstatement, effective December 14, 2012, Respondent's New Jersey medical license was reinstated, subject to certain conditions. The substantive conditions of reinstatement include the ability to examine and treat patients within the scope of his practice as a psychiatrist; Respondent's pain management practice shall be limited to examining patients, determining a course of treatment and performing trigger point injections. In addition, Respondent is prohibited from any interventional procedures, except trigger point injections, in any setting except a licensed hospital. (T. 11; Exhibit A).

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 was convicted, upon a guilty plea, of a crime under New Jersey law. The First Specification of professional misconduct alleges a violation of Education Law §6530(9)(a)(iii) by virtue of that conviction. In order to sustain this charge, the Department must prove that the conduct underlying the New Jersey conviction would constitute a crime under the laws of New York, had it occurred here.

Respondent argued that he was convicted of reckless health care fraud, and that there is no analogue to this crime under New York law.

The sections of the New York Penal Law concerning insurance fraud are contained in Article 176. All of the various degrees of insurance fraud proscribed by law require as an essential element, the *intent* to defraud. The conduct underlying the New Jersey conviction was reckless, but there was no finding of intent to defraud. The Department did not cite any criminal statute under the Penal Law equivalent to the law underlying Respondent's New Jersey conviction. Therefore, the First

Specification cannot be sustained.

The Second and Third Specifications are grounded in the disciplinary action taken by the New Jersey Board. The New Jersey Board specifically found that Respondent's medical care and treatment of two patients demonstrated gross negligence and/or multiple acts of negligence. Respondent's treatment of the named patients, if committed in New York State would constitute gross negligence, in violation of Education Law §6530(4). Accordingly, the Second and Third Specifications are sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's should be placed on probation for a period of five (5) years from the effective date of this Determination and Order. The terms of probation should also include a requirement that Respondent's billing practices be monitored, in addition to the standard terms of probation. In addition, Respondent shall remain obligated to comply with all terms and conditions imposed by the New Jersey Board in its Consent Order of Reinstatement. The period of probation shall commence when Respondent registers for practice in New York, and shall be tolled while he remains out of the state. In addition, a restriction shall be placed on

his license to match the restrictions placed on his New Jersey license. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee was impressed by Respondent's expressions of remorse, and takes note of the penalties he has paid for his actions. He was criminally convicted, his license was suspended for a year, with attendant loss of income, paid substantial restitution, and he now can only practice subject to permanent limitations on his New Jersey license.

This Committee has an independent obligation to determine the appropriate sanction to be imposed in New York. However, we can take guidance from the sanction imposed by the New Jersey Board. That guidance, plus our determination that Respondent is highly unlikely to ever again engage in the type of actions which brought him in violation of the law, dictate that the sanction imposed herein is appropriate to the circumstances.

ORDER

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

1. The Second and Third Specifications of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) are SUSTAINED;
2. The First Specification of professional misconduct is DISMISSED;
3. Respondent's license to practice medicine in New York State shall be placed on PROBATION for a term of FIVE (5) YEARS from the effective date of this Determination and Order. The complete terms of probation are set forth in Appendix II of this Determination and Order and incorporated therein;
4. A restriction shall be and hereby is placed on Respondent's license to practice medicine in New York as follows: Respondent's pain management practice shall be limited to examining patients, determining a course of treatment and performing trigger point injections. In addition, Respondent is prohibited from any interventional procedures, except trigger point injections, in any setting except a licensed hospital.
5. 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
, 2013

3/1/2013

REDACTED

TREVOR A. LITCHMORE, M.D. (CHAIR)

JANET M. MILLER, R.N.
REID T. MULLER, M.D.

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

Daniel G. Giaquinto, Esq.
Kern, Augustine, Conroy & Schoppmann, P.C.
Suite 200 South
865 Merrick Avenue,
Westbury, New York 11590

Shams Qureshi, M.D.

REDACTED

APPENDIX I

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

IN THE MATTER
OF
SHAMS QURESHI, M.D.
CO-12-03-1026-A

STATEMENT
OF
CHARGES

SHAMS QURESHI, M.D., Respondent, was authorized to practice medicine in New York state on July 28, 1987, by the issuance of license number 171182 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 11, 2010, in the Superior Court of New Jersey, Passaic County, Respondent was convicted upon a plea of guilty of Recklessly Committing Health Care Claims Fraud in the Third Degree, in violation of N.J.S.A. 2C:21-4.3(a), and was sentenced on or about August 20, 2010, to two (2) years of probation, home confinement for the first three (3) months of the probationary term, and \$155.00 in fees and penalties.

B. On or about September 19, 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 Consent Order (hereinafter "New Jersey Order"), inter alia, suspended Respondent's medical license for two years, required Respondent to appear before a Committee of the Board and demonstrate that he is fit and competent prior to reinstatement, permanently barred Respondent from performing prolotherapy, and assessed fees of \$100,000.00, based on Respondent engaging in gross negligence, insurance fraud, and falsification of patient records.

C. 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(4) (practicing the profession with gross negligence on a particular occasion).

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:

1. The facts in Paragraphs B and/or C.

THIRD 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 B and/or C.

DATED: *Sept. 13*, 2012
Albany, New York

REDACTED

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

APPENDIX II

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway Suite 355, Albany, New York 12204; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall comply fully with the December 14, 2012 Consent Order of Reinstatement of the New Jersey State Board of Medical Examiners and any extension or modification thereof. Respondent shall provide a written authorization for the New Jersey State Board of Medical Examiners to provide the Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the New Jersey Order. Respondent shall submit quarterly a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the New Jersey Order during the declaration period specified.
9. Within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when his billing practices are monitored by a certified billing and coding specialist, proposed by Respondent and subject to the written approval of the Director of OPMC. The billing and coding specialist shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 25) of records maintained by Respondent. The review will determine whether the Respondent's billing practices are conducted in accordance with generally accepted standards of practice. Any perceived deviation of accepted standards of billing practices or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring billing and coding specialist. Respondent shall cause the billing and coding specialist to report quarterly, in writing, to the Director of OPMC.
10. Respondent shall maintain medical malpractice coverage with limits no less than \$2million per occurrence and \$6million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
11. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order, and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.