

October 10, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Leslie D. Theodore, M.D.
REDACTED

William J. McDonald, Esq.
Campolo, Middle & McCormick LLP
4175 Veterans Memorial Highway – Suite 400
Ronkonkoma, New York 11779

RE: In the Matter of Leslie Theodore, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-251) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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

COPY

IN THE MATTER
OF
LESLIE THEODORE, M.D.

DETERMINATION
AND
ORDER

BPMC #14-251

A hearing was held on September 18, 2014 at the offices of the New York State Department of Health ("the Department"), Bureau of Adjudication, 150 Broadway, Suite 510, Albany, New York 12204. A Commissioner's Order and Notice of Referral Proceeding and a Statement of Charges, all dated June 15, 2014, were served upon the Respondent, Leslie D. Theodore, M.D. Therese G. Lynch, M.D., Chair, Eleanor C. Kane, M.D., and Janet M. Miller, R.N., members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. Denise Lepicier, Administrative Law Judge, served as the administrative officer. The Department appeared by Nate White, Assistant Counsel, Bureau of Professional Medical Conduct. The Respondent, Leslie Theodore, M.D., appeared at the hearing with his attorney, William J. McDonald, Esq. 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 ("PHL") § 230(10)(p). This statute provides for a hearing with limited issues when a licensee is charged based upon a violation of

New York Education Law § 6530(9). In such cases, a licensee is charged with misconduct based upon a criminal conviction regarding conduct which is a crime under federal law or in New York State or upon an administrative adjudication in another state regarding conduct that would amount to professional misconduct if committed in New York. The scope of the hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee. PHL § 230(10)(p).

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(a)(ii), by having been convicted of a crime under federal law.

Copies of the Commissioner's Order and Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1. The Department offered exhibits numbered 1 through 5. The Respondent offered exhibits numbered A through G. Respondent was the only witness to testify at the hearing.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Exhibits will be referred to in parentheses by an "Ex." followed by the appropriate exhibit number or letter. These citations refer to evidence found persuasive by the hearing committee in arriving at a particular finding. All hearing committee findings were unanimous.

1. Leslie D. Theodore, M.D., the Respondent, was personally served with the Commissioner's Order and Notice of Referral Proceeding and the Statement of Charges on July 24, 2014. (Ex. 2)
2. The Respondent was authorized to practice medicine in New York State on March 29, 1991 by the issuance of license number 185234 by the New York State Education Department. (Ex. 3)

3. On March 11, 2013, the United States District Court for the Southern District of New York imposed judgment in case number 11 CR 892-02 and imposed sentence on Leslie Theodore, M.D. (Ex. 4, p. 21)
4. Respondent was convicted on March 11, 2013, after he pled guilty on or about October 5, 2012, to one count of conspiracy to commit health care fraud. (Ex. 4, pp. 3-16, 21; Ex. A)
5. The Respondent admitted in his plea that "between the years 2007 and 2011 in the Southern District of New York, he knowingly and intentionally agreed with others to submit claims to insurance company [sic] for medical treatment of patients at no-fault clinic [sic]. The claims turned out to be false." (Ex. A, p. 13) Respondent admitted that he knew the claims were false and that they related to no-fault insurance claims. (Ex. A, p. 14).
6. Respondent was sentenced on March 11, 2013, to imprisonment for the time he served; three years of supervised release with the first six months to be spent in a community confinement center; thirty hours of community service each week during the term of his supervised release; general terms of supervision; and repayment of restitution in the amount of \$397,428.30. (Ex. 4, pp. 21-26)

CONCLUSIONS OF LAW

The following determination with respect to the specification charged was unanimous. The specification charges that Respondent violated Education Law § 6530 (9)(a)(ii) by having been "convicted of committing an act constituting a crime" under federal law. Respondent did not deny the conviction at hearing. (Hearing transcript) **The Specification is Sustained.**

DETERMINATION AS TO SANCTION

The hearing committee has considered the full range of sanctions available pursuant to PHL Education§ 230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) monetary penalties; (8) a course of education or training; (9) performance of public service; and, (10) probation. The hearing committee has unanimously concluded that the only appropriate sanction is a revocation of Respondent's license.

The committee feels that health care fraud is a very serious offense. It affects all persons because it increases the cost of medical care for everyone through increased premiums. This increase in cost can also lead to less access to care for some.

At hearing, the Respondent denied he ordered unnecessary services or intended to defraud an insurance company, despite his plea allocution where he admitted he knew the claims to insurance companies were false. (Ex. A, p. 51, 56-57, 61-62 Respondent cannot deny the fact that he pled guilty to the federal indictment and admitted committing fraud. In the less than four years that Respondent lent his license to these no-fault insurance clinics, the fraud perpetrated on the insurance companies was over \$397,000. The only appropriate sanction is revocation.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **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 § 230(10)(h).

DATED: Rochester, New York
October 6, 2014

REDACTED

Therese G. Lynch, M.D., Chair

Eleanor C. Kane, M.D.
Janet M. Miller, R.N.

To:

Nate White
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – 25th floor
Empire State Plaza
Albany, N.Y. 12237

Leslie D. Theodore, M.D.

REDACTED

William J. McDonald, Esq.
Campolo, Middle & McCormick, LLP
4175 Veterans Memorial Highway, Suite 400
Ronkonkoma, N.Y. 11779

IN THE MATTER
OF
LESLIE D. THEODORE, M.D.

STATEMENT
OF
CHARGES

LESLIE D. THEODORE, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 29, 1991, by the issuance of license number 185234 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 11, 2013, in the United States District Court, Southern District of New York, Respondent pleaded guilty to one count of conspiracy to commit mail fraud and health care fraud in violation of 18 U.S.C. 1349, a felony. As a result, the Respondent was sentenced to time served, three years of supervised release, six months in a community confinement center, thirty hours of community service each week for three years, possible mandatory therapeutic counseling, an assessment fee of \$100.00 and a forfeiture of \$63,200.00.

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in paragraph A.

DATE: July 15, 2014
Albany, New York

REDACTED
MICHAEL A. HISEK
Deputy Counsel
Bureau of Professional Medical Conduct