



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

November 12, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Jean G. Elle, M.D.


Barbara Dominique, Esq.
Joyce Elle, Esq.
Dominique & Elle
225 Broadway – Suite 2515
New York, New York 10007

RE: In the Matter of Jean G. Elle, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-271) 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. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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,


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
JEAN G. ELIE, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #15-271

COPY

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A July 2, 2015 Commissioner's Order and Notice of Referral Proceeding ("Order and Notice") with Statement of Charges ("SOC") was served upon Jean G. Elie, M.D. ("Respondent") on July 14, 2015. The SOC was amended on September 17, 2015. The Order and Notice with Amended SOC is attached to this Determination and Order as Appendix 1. A hearing, pursuant to N.Y. Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§301-307 and 401, was held on September 17, 2015 at the Department's offices at 150 Broadway, Albany, New York.

Jill M. Rabin, M.D., Sanford H. Levy, M.D., and Randolph H. Manning, Ph.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee ("Committee") in this matter. Administrative Law Judge Ann H. Gayle served as the administrative officer. The Department appeared by Paul Tsui, Associate Counsel. The Respondent appeared by Barbara Dominique, Esq., and Joyce Elie, Esq., of Dominique & Elie.

STATEMENT OF CASE

Respondent is charged with professional misconduct pursuant to N.Y. Education Law ("Educ. Law") §6530(9)(a)(i) for having been convicted of a crime under New York State law.

When a licensee is charged with misconduct under Educ. Law §6530(9), the scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee (PHL §230(10)(p)).

FINDINGS OF FACT

Citations in brackets, which refer to transcript page numbers ["T"] and exhibits ["Ex"] that were accepted into evidence, represent evidence found persuasive by the Committee in arriving at the following Findings of Fact. All Committee findings are unanimous.

1. Respondent was authorized to practice medicine in New York State on September 3, 1987, by the issuance of license number 172184 by the New York State Education Department. [Ex 3]
2. Respondent, a psychiatrist, has served an underserved community in Brooklyn, New York for his entire 30-year career. Respondent's patients, many of whom have criminal histories, suffer primarily from mental illness, disability due to mental illness, addiction and substance abuse. [T 28-31, 32-34]
3. On August 5, 2014, Respondent pled guilty to the crime of Offering a False Instrument for Filing in the First Degree, a felony, under New York Penal Law §175.35 in Supreme Court, Kings County, Index No. 06359-2014, and his February 13, 2015 sentence included a probationary term of five years, and a fine and surcharge. [Ex 5; Ex 6; T 40-41, 45-47]
4. Respondent did not have possession of his passport while the criminal charges were pending. Respondent pled guilty to the felony charge, in part, so his passport could be returned to him and he could visit his dying mother in Haiti. Respondent's mother died three weeks after Respondent arrived in Haiti to see her. [T 38-40, 52]

CONCLUSIONS OF LAW

Respondent was charged with professional misconduct under Educ. Law §6530(9)(a)(i) for having been convicted of committing an act constituting a crime under New York state law (First Specification of Charges). The Committee unanimously concludes that the First Specification is sustained based on the conviction of the crime of Offering a False Instrument for Filing in the First Degree, a felony, under New York state law.

DETERMINATION AS TO PENALTY

Respondent's attorney proposed a penalty of a one-year suspension of Respondent's license, effective November 2014 to November 2015, and a censure. The Department argued that the only appropriate penalty is a revocation of Respondent's license. The Committee, in considering the full range of penalties available pursuant to PHL Law §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) a fine up to \$10,000 per specification sustained; (8) a course of education or training; (9) performance of public service; and, (10) probation, unanimously concludes that the appropriate penalty for Respondent's misconduct is a suspension of his license, a limitation on his license, a requirement for CME, and probation to include a practice monitor.

The Committee believes Respondent pled guilty to the felony charge so his passport could be returned to him and he could visit his dying mother in Haiti. Although the Committee found Respondent to be credible and not a danger to the public, the Committee is concerned not only with how Respondent totally ignored coding but also with his description of how he billed and kept notes for his patients.

The Committee concludes that the serious nature of the acts underlying the felony conviction warrants an actual suspension of Respondent's license for six months. The six-month suspension, added to the time Respondent has already been out of practice, warrants a direction that Respondent complete 60 hours of continuing medical education ("CME") during his six-month suspension to ready him for his return to practice. Also, because the Committee believes Respondent is not a danger to the public, the revocation the Department seeks would be a disservice to the underserved community he serves, not a protection. Finally, to assure continued quality care to this underserved community, the Committee directs three years of probation, which will include a practice monitor for one year commencing on the date Respondent returns to practice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The charge of misconduct under Educ. Law §6530(9)(a)(i) for having been convicted of a crime under New York state law is sustained.
2. Pursuant to PHL §230-a (2)(a) Respondent's license to practice medicine shall be suspended, wholly, for six months commencing on the effective date of this order.
3. Pursuant to PHL §230-a (3) there shall be a permanent limitation on Respondent's license precluding him from billing as part of his medical practice. Respondent shall not engage in any billing in any setting.
4. Pursuant to PHL §230-a (8) Respondent is required to pursue a course of education by completing 60 hours of CME courses in the six-month period when his license to practice medicine is wholly suspended. Once he returns to practice, Respondent is required to continue to complete the standard CME requirements for licensure and his specialty.
5. Pursuant to PHL §230-a (9) Respondent shall be placed on Probation for a period of three (3) years. Terms of Probation are attached to this Determination and Order as Appendix 2. Probation will include a practice monitor for one year commencing upon his return to practice.

6. This order shall be effective upon service on the Respondent by personal service or by certified mail as required under PHL §230(10)(h).

DATED: New York, New York
November 10, 2015



JILL M. RABIN, M.D., Chair
SANFORD H. LEVY, M.D.
RANDOLPH H. MANNING, Ph.D.

APPENDIX 1

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

IN THE MATTER

OF

JEAN G. ELIE, M.D.
CO-13-02-0626-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

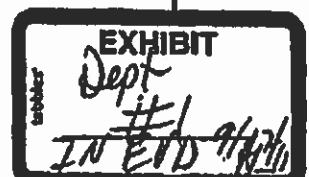
TO: Jean G. Elie, M.D.
[REDACTED]

The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that JEAN G. ELIE, M.D., Respondent, New York license number 172184, has pleaded guilty to committing an act constituting a felony under New York State law; as is more fully set forth in the Statement of Charges attached hereto, and made a part hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, JEAN G. ELIE, M.D., shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN VIOLATION OF THIS COMMISSIONER'S ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY, DEFINED BY NEW YORK EDUCATION LAW §6512.



PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 17th day of September, 2015, at 10:30 a.m., at Riverview Center, 150 Broadway, Suite 510, Menands (Albany), New York 12204-2719¹, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. The licensee may file a brief and affidavits with the Committee on Professional Conduct. A summary of the Department of Health Hearing Rules is enclosed. 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.

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, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION:

¹ For GPS purposes, enter "Menands", not "Albany".

(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 no less than ten (10) days prior 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 of 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.

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, conclusion as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a.

YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

July 2, 2015


Howard A. Zuckel, M.D., J.D.,
Commissioner of Health
New York State Department of Health

Inquiries should be addressed to:

Paul Tsui
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

Amended
STATEMENT
OF
CHARGES

IN THE MATTER

OF

JEAN G. ELIE, M.D.
CO-13-02-0626-A

JEAN G. ELIE, M.D., Respondent, was authorized to practice as a physician in New York State on September 3, 1987, by the issuance of license number 172184 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 5, 2014, in the Supreme Court, Kings County, State of New York, Respondent was found guilty, based on a plea of guilty, of Offering a False Instrument for Filing in the First Degree, a felony, in violation of New York Penal Law §175.35, and was sentenced on February 13, 2015, to five (5) years of probation, restitution [REDACTED] and \$350.00 in fines and surcharges.

AG 9-17-15

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

1. The facts in paragraph A.

DATED: *July 2*, 2015
Albany, New York

[REDACTED]
MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and to governing law. Any act of professional misconduct by Respondent as defined by New York Education Law §§6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York Public Health Law §230 (10) or (19), or both.
2. Respondent shall remain in continuous compliance with all requirements of New York Education Law §6502, including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in New York Education Law §6502(4) to avoid registration and payment of fees.
3. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, at least every six months and as otherwise requested, or within thirty days of any change in the information, the following information in writing:
 - a. a full description of the Respondent's employment and practice;
 - b. all professional and residential addresses and telephone numbers within and outside of New York State;
 - c. any and all information concerning investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency;
 - d. any and all information concerning investigations, terminations, or disciplinary matters by any institution or facility.
4. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, copies of all applications relating to the practice of medicine, including but not limited to, privileges, insurance, and licensure, in any jurisdiction, concurrent with their submission.
5. Respondent shall cooperate fully with, and will respond within two weeks to, OPMC requests to provide written periodic verification of Respondent's compliance with these

terms of probation. Upon the Director of OPMC's request, Respondent shall meet personally with a person designated by the Director.

6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty-day period. Respondent shall notify the Director at least fourteen days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume, and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
7. The Director of OPMC, or his/her designee, may review Respondent's professional performance. This review may include but shall not be limited to:
 - a. A review of office records, patient records, hospital charts, and/or electronic records;
 - b. Interviews with or periodic visits with Respondent and/or staff at practice locations or at OPMC offices.
8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients, and contain all information required by State rules and regulations concerning controlled substances.
9. Immediately upon Respondent's return to practice following the Board-ordered six-month suspension of his license, and continuing for one year, Respondent shall practice only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to written approval of the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice on a random unannounced basis at least monthly and shall examine a selection (no less than 20) of records maintained by Respondent. The review will determine whether Respondent's

charting is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

- b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
- c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
- d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million 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 within 30 days after the effective date of this Determination and Order.

10. Respondent shall comply with these Terms of Probation, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or a violation of these terms, the Director of OPMC and/or the Board for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other proceeding authorized by law, against the Respondent.

**To: Paul Tsui
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower
Empire State Plaza
Albany, New York 12237**

Jean G. Elie, M.D.



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