



ANDREW M. CUOMO
Governor

Department of Health

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

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

December 1, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Zeinab S. Elbaz, M.D.


RE: In the Matter of Zeinab Elbaz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-285) 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.

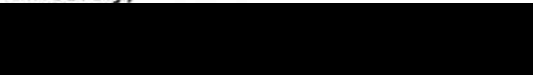
The notice of review served on the Administrative Review Board should be forwarded to:

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
ZEINAB ELBAZ, M.D.,
Respondent

COPY

DETERMINATION
AND
ORDER

BPMC #15-285

A hearing was held on September 16, 2015, at the offices of the New York State Department of Health ("the Department"). Pursuant to Section 230(10)(e) of the Public Health Law, Jacqueline H. Grogan, Ed.D., Chairperson, Steven J. Lana, M.D., FAAP, and John D. Thomas, II, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter.¹ Dawn MacKillop-Soller, Esq., Administrative Law Judge ("ALJ"), served as the Administrative Officer. The Petitioner appeared by Richard Zahnleuter, Esq., Acting General Counsel, by Jeffrey Conklin, Esq., of counsel. The references in brackets refer to exhibits [Ex.] and/or testimony [T.]. A Notice of Referral Proceeding, Statement of Charges, and Summary of Department of Health Hearing Rules dated June 11, 2015, were served upon Zeinab Elbaz, M.D. ("Respondent").² Respondent represented herself at the hearing. There were no other witnesses.

¹ Steven J. Lana, M.D., FAAP, appeared via telephone.

² Copies of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix I and were personally served on Respondent on June 22, 2015 at her New York residence. As a result, the ALJ found that jurisdiction was established. [Ex. 2]

The Department's exhibits numbered 1-5 were received into evidence, as were Respondent's exhibits marked A-D.

After consideration of the entire record, the Hearing Committee issues this Determination and Order, finding Respondent guilty of misconduct and imposing a penalty of suspension stayed in part, and probation with conditions.

STATEMENT OF THE CASE

This proceeding was commenced pursuant to Public Health Law § 230(10)(p), which provides for a hearing with circumscribed issues when 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 federal criminal conviction, or a conviction in New York State, or a conviction in another state where the conduct would constitute a crime in New York State, or an administrative adjudication of misconduct in another state regarding conduct that would amount to professional misconduct if committed in New York State.

Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(a)(i), having been convicted of committing an act constituting a crime under New York state law. This case is based on Respondent's conviction, following a jury trial, in the state of New York, to the class A misdemeanor crime of Criminal Mischief in the Fourth Degree, in violation of New York Penal Law §145.00(1). At the hearing, Respondent did not dispute that she was convicted of the misdemeanor charge following a jury trial, but she denied that the underlying conduct leading to the conviction ever took place and in her Answer to this specification pled "not guilty to any and all" professional misconduct charges. [Ex. A] The scope of the hearing did not include re-litigation of the underlying criminal conviction and was limited to a determination of the nature and severity of the penalty to be imposed.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Respondent was licensed as a physician in New York State on August 22, 2000, through the issuance of license number 218909 by the New York State Education Department. [Ex. 3]

2. On April 19, 2013, Respondent was convicted in District Court, County of Suffolk, following a jury trial, of Criminal Mischief in the Fourth Degree, a misdemeanor, in violation of VTL § 145.00(1). [Ex. 4]

3. Sentencing on the misdemeanor charge occurred on April 1, 2014, and included a conditional discharge, 140 hours of community service, participation in an anger management course, and payment of \$250.00 in fees and surcharges.³ [Ex. 4 and Ex. 1]

HEARING COMMITTEE DETERMINATION

The Respondent did not contest that she had been convicted of a misdemeanor in New York State. The Hearing Committee, therefore, unanimously sustained the specification in the Statement of Charges. The Hearing Committee took note of the Respondent's continued insistence that the conduct underlying the conviction never occurred, but could not consider such evidence. Under PHL § 230(10)(p), a conviction having been proven, the evidence and testimony permitted is

³ At the time of the Hearing, the ALJ granted the Department's request to amend the Statement of Charges to reflect a conviction date of "on or about April 19, 2013", as opposed to June 14, 2013. [T. 15,16]

"strictly limited" to "the nature and severity of the penalty to be imposed on the licensee." The licensee may not re-litigate the facts underlying the conviction.

The Hearing Committee considered that as part of her sentencing for the underlying criminal conviction, which resulted in property damage, Respondent was required to successfully complete anger management counseling, 140 hours of community service, and pay fees and surcharges. [Ex. 1, 4, 5] The Hearing Committee noted that, although more than a year has passed since her sentencing, Respondent has not taken any steps to comply with her sentence. [T. 36,37] Instead of learning how to manage her emotions and anger effectively, Respondent's testimony focused on how she was victimized and wronged in the criminal process. [T. 10,11,35,38,40,41,44] The Committee was particularly concerned that Respondent had not completed a course in anger management as directed.

The Hearing Committee concluded that pursuant to PHL § 230-a(2)(a), Respondent should be suspended for one year, with the last six months of the suspension stayed. In addition, the Committee determined that Respondent should be placed on probation for a period of two years at the end of the six-month actual suspension and should be required to complete a course in anger management, as one of the conditions of probation, during the first six months of the probationary period. The Terms of Probation are attached as Appendix II.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges (Appendix I), is SUSTAINED; and
2. Respondent is suspended for one year, with the last six months of the suspension stayed. In addition, the Respondent is placed on probation for a period of two years at the end of the six-months of actual suspension and is required to complete a course in anger management, as specified in the terms of probation, during the first six months of the probationary period.
3. Respondent must comply with the terms of this Determination and Order and all the Terms of Probation attached to this Determination and Order; and
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

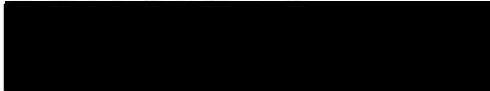
DATED: Albany, New York
November 20, 2015


Jacqueline H. Grogan, Ed.D.
Chairperson

Steven J. Lana, M.D., FAAP
John D. Thomas, II, M.D.

To:

Zeinab S. Elbaz, M.D.



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

APPENDIX I

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

IN THE MATTER
OF
ZEINAB ELBAZ, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Zeinab Elbaz, M.D.

Anthony Z. Scher, Esq.
Wood & Scher
222 Bloomingdale Road, Suite 311
White Plains, New York 10605

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) and N.Y. State Admin. Proc. 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 16th day of September, 2015, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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 or sworn testimony on your behalf. Such evidence or sworn testimony shall be

EXHIBIT

#1

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 which 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, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, 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 twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. 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 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

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

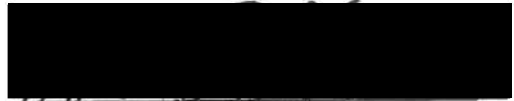
Department attorney: Initial here 

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 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
June, 11 2015



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Paul Tsui,
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
ZEINAB ELBAZ, M.D.
CO-14-04-2034-A

STATEMENT
OF
CHARGES

Zeinab Elbaz, M.D., Respondent, was authorized to practice as a physician in New York State on August 22, 2000, by the issuance of license number 218909 by the New York State Education Department.

FACTUAL ALLEGATIONS

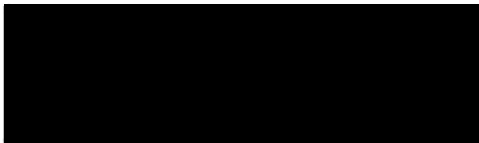
A. On or about ^{April 19,} ~~June 14,~~ 2013 in the District Court, County of Suffolk, State of New York, Respondent was found guilty, based on a jury verdict, of Criminal Mischief in the Fourth Degree, in violation of New York Penal Law, §145.00(1), a class A misdemeanor, and was sentenced on, April 1, 2014, to a one-year conditional discharge, 140 hours of community service, participation in an anger management course, and \$250.00 in fees and surcharges.

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: *June 11*, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

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 licensee register and continue to be registered with the New York State Education Department and that licensee 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 is suspended for one year, with the last six months of the suspension stayed. In addition, Respondent is placed on probation for a period of two years at the end of the six-months of actual suspension and is required to complete a course in anger management during the first six months of the probationary period.
4. Prior to enrolling in the anger management course, the Respondent must provide to the Director of OPMC the name of the provider and location for the anger management course, as well as a description of the course to include its duration and the proposed dates of attendance. Once the anger management course is approved by the Director of OPMC, Respondent must enroll in it and participate in the course in its entirety, until its successful completion, providing proof of completion to the Director of OPMC.
5. The Respondent must also 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; and
 - d. Any and all information concerning investigations, terminations, or disciplinary matters by any institution or facility.

6. 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 practice as a physician, including but not limited to, insurance and licensure, in any jurisdiction, concurrent with their submission.
7. 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.
8. 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.