



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299
www.health.ny.gov

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

Public

Sue Kelly
Executive Deputy Commissioner

April 26, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Godfrey Ugochukwu Mbonu, M.D.
REDACTED

Margaret Surowka Rossi, Esq.
Hiscock & Barclay, LLP
50 Beaver Street
Albany, New York 12207

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

RE: In the Matter of Godfrey Ugochukwu Mbonu, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-98) 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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
GODFREY UGOCHUKWU MBONU, M.D.

DETERMINATION
AND
ORDER
BPMC #11-98

A hearing was held on March 24, 2011, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated November 1, 2010, were served upon the Respondent, **Godfrey Ugochukwu Mbonu, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Therese G. Lynch, M.D.**, Chair, **James R. Dickson, M.D.**, and, **Virginia R. Marty**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Joel E. Abelove, Esq.**, of Counsel. The Respondent, **Godfrey Ugochukwu Mbonu, M.D.** did appear with counsel, **Margaret Surowka Rossi, Esq.**, of **Hiscock & Barclay, LLP.**, Albany, New York. Evidence was received and a transcript of these proceedings was 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 when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i) – by having been convicted of committing an act constituting a crime under New York State law. Specifically, the Respondent was found guilty, based on a plea of guilty, of Grand Larceny in the Third Degree, in violation of New York Penal Law, §155.35, a class D felony, and was sentenced to one year imprisonment and \$214,156.90 restitution. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 2.

WITNESSES

For the Petitioner:

None

For the Respondent:

Godfrey Ugochukwu Mbonu, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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. All Hearing Committee findings were unanimous.

1. The Respondent, Godfrey Ugochukwu Mbonu, M.D., did appear with counsel and was duly served. (Petitioner's Exhibit 2)
2. Godfrey Ugochukwu Mbonu, M.D., the Respondent, was authorized to practice medicine in New York State on September 26, 2002, by the issuance of license number 226508 by the New York State Education Department. (Petitioner's Ex. 3)
3. On or about April 28, 2010, in the Supreme Court of the State of New York, New York County, New York, Respondent was found guilty, based on a plea of guilty, of Grand Larceny in the Third Degree, in violation of New York Penal Law, §155.35, a class D felony, and was sentenced to one year imprisonment and \$214,156.90 restitution.
4. The conduct resulting in the above conviction would constitute misconduct under the laws of New York State, pursuant to the following section of New York State law:

New York Education Law §6530(9)(a)(i), conviction of a crime under New York State law.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law §6530(9)(a)(i) having been convicted of a crime under New York State law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing with counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process and that jurisdiction had been established over the Respondent. There was no dispute about jurisdiction. There was also no dispute about the basic fact of this case. Further, the Respondent acknowledged that he was convicted of the felony in this case.

The Certificate of Conviction in this case, Exhibit 4, shows that the Respondent pled guilty to the class D felony of Grand larceny in the Third Degree and was sentenced to a year in prison. The sentence minutes indicate that the total restitution due to Medicaid was some \$214,156.90. The Respondent was asked at the hearing how much he had defrauded Medicaid and he indicated some \$50,000 (T. 45). When he was asked about the discrepancy with restitution amount, the Respondent was not able to recall the exact

amount and testified that he had to pay back over \$200,000 because of the cost of administrative charges in conducting the investigation. (T. 45) The panel found that the Respondent was less than candid about the amount of money he had stolen from Medicaid. The panel did not believe the Respondent's explanation as to why there was a restitution cost of some \$214,156.90.

The panel found the Respondent's testimony to be less than forthright and was concerned about the Respondent's honesty and ability to be trusted with money and billing in the future. To provide some guaranty that the Respondent will not revert to this crime in the future, the panel insisted that the Respondent's practice be permanently limited to work in Article 28 facilities. This would be the case because in such institutions the Respondent would not handle money and would do no direct billing of any kind. It is noted that the Respondent has already been permanently excluded from the Medicaid program.

In his defense, the Respondent's attorney presented several documents, which the panel considered in mitigation of the penalty to be imposed. Respondent's Exhibit A is a letter from Walter Furer, M.D., who worked with the Respondent for several years at the SISCK clinic. Dr. Furer was aware of Respondent's guilty plea for billing issues but indicated that the Respondent always displayed professionalism and always acted in the best interests of his patients.

Respondent's Exhibit B is a letter from Allison Johnson, a Social Worker and mother of the Respondent's seven-year-old son. Ms. Johnson asked for leniency and a second chance, and for the opportunity for Respondent to practice again and be able to provide for the social and emotional well being of his family. Respondent's Exhibit D is a Certificate of Recognition for his psychiatric outreach work with the homeless back in 1998. The panel

was impressed with this evidence of the Respondent's good work in the past. The panel took these letters and testimonials into account in fashioning an appropriate penalty. The panel also gave some weight to the Respondent's testimony about the difficulty of his childhood in civil war torn Nigeria.

In assessing the penalty to be imposed in this case, the panel took many factors into account, not the least of which was the fact that the Respondent clearly expressed sorrow and remorse for what he had done. The panel weighed the seriousness of the crime that was committed against the fact that the Respondent had paid for his crime, was apparently remorseful, and was now ready to resume his role in society.

The panel was concerned about the Respondent's demonstrated lack of honesty and financial integrity, and was unanimous in concluding that any medical work he would do in the future would be restricted to working in institutions where he would not be able to bill independently and thus would never again be in a position to defraud Medicaid. The panel was satisfied that the people of New York would be protected with a permanent limitation on his license, which would restrict his practice to work in Article 28 hospitals or facilities.

The panel considered the full range of penalties available in the case and determined that a five-year probation would be appropriate, provided his license is permanently restricted to work in Article 28 facilities. The panel was satisfied that the people of New York would be protected with this limitation on his license, which would restrict his practice and protect the public from any future fraud.

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 hereby permanently restricted to practice in Article 28 facilities.
3. The license of the Respondent to practice medicine in New York State is hereby **SUSPENDED FOR A PERIOD OF FIVE YEARS; HOWEVER, THE SUSPENSION IS STAYED IN WHOLE.**
4. Respondent is placed on a term of probation for five years. The terms of the probation are attached hereto as Appendix I and are incorporated into this Order.
5. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Pittsford, New York
April 25 2011

REDACTED

Therese G. Lynch, M.D., Chair

James R. Dickson, M.D.
Virginia R. Marty

To:

Godfrey Ugochukwu Mbonu, M.D.

REDACTED

Margaret Surowka Rossi, Esq.
Hiscock & Barclay, LLP.
50 Beaver Street
Albany, New York 12207

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

APPENDIX 1

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his 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), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; 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. Throughout the period of probation, the Respondent shall practice medicine under the supervision of a practice monitor. The practice monitor shall be on-site at the facility employing the Respondent, unless determined otherwise by the Director of OPMC. The practice monitor shall be proposed by the Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall not be a family member or personal friend, or be in a professional relationship, which could pose a conflict with supervision responsibilities.
5. Respondent shall ensure that the practice monitor is familiar with the Order and terms of probation, and be aware of the financial integrity issues in this case, and be willing to report to OPMC. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's honesty and integrity. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
6. Respondent shall authorize the practice monitor to have access to patient records and to submit quarterly written reports to the Director of OPMC, regarding Respondent's practice, including, but not limited to procedures for obtaining written consent to procedures and appropriate chaperoning of patients. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, and other such on-duty conduct as the practice monitor deems appropriate to report.

7. 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.
8. 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.

APPENDIX 2

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

EXHIBIT

IN THE MATTER

OF

GODFREY UGOCHUKWU MBONU, M.D.
NY-09-06-3610-A

NOTICE OF
REFERRAL
PROCEEDING

TO: GODFREY UGOCHUKWU MBONU, M.D.
New York City Inmate Number 310-10-00425
Anna M. Kross Center
18-18 Hazen St.
East Elmhurst, NY 11370

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law. §§230(10)(p) and New York State Administrative Procedures 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 December, 2010, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be 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 that 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING 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 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 not less than ten (10) 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 (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 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.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) 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 (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, 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

November 1, 2010

REDACTED

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

Inquiries should be addressed to:

Joel E. Ablove
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
GODFREY UGOCHUKWU MBONU, M.D.
NY-09-06-3610-A

STATEMENT
OF
CHARGES

GODFREY UGOCHUKWU MBONU, M.D., Respondent, was authorized to practice medicine in New York State on September 26, 2002, by the issuance of license number 226508 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 28, 2010, in the Supreme Court of the State of New York County, New York, Respondent was found guilty, based on a plea of guilty, of Grand Larceny in the Third Degree, in violation of New York Penal Law, §155.35, a class D felony, and was sentenced to one year imprisonment and \$214,156.90 restitution.

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: *November 1*, 2010
Albany, New York

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