

December 30, 2014

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ivan D. Baraque, M.D.

REDACTED

Mark L. Furman, Esq.

Hoffman, Polland & Furman, PLL

220 East 42<sup>nd</sup> Street – Suite 435

New York, New York 10017

David W. Quist, Esq.

NYS Department of Health

ESP-Corning Tower-Room 2512

Albany, New York 12237

**RE: In the Matter of Ivan Dario Baraque, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 14-324) 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. 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 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**

**COPY**

**IN THE MATTER  
OF  
IVAN DARIO BARAQUE, M.D.**

**DETERMINATION  
AND  
ORDER  
BPMC #14-324**

A hearing was held on November 20, 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, both dated July 15, 2014, were served upon the Respondent, Ivan D. Baraque, M.D., by personal service on July 25, 2014. Steven I. Sherman, D.O., Chair, Mohammad-Reza Ghazi-Moghadam, M.D., and William W. Walence, Ph.D., 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 David Quist, Associate Attorney, Bureau of Professional Medical Conduct. The Respondent, Ivan D. Baraque, M.D., was represented by Mark Furman, Esq., of Hoffman, Polland and Furman. 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 § 230(10)(p). This statute provides for a hearing on 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.

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 (Exhibit 1) are attached to this Determination and Order as Appendix 1.

## 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." Transcript citations will be referred to in parentheses by a "T." These citations refer to evidence found persuasive by the hearing committee in arriving at a particular finding. All hearing committee findings were unanimous.

1. The Respondent was authorized to practice medicine in New York State on January 28, 1985, by the issuance of license number 161270 by the New York State Education Department. (Ex. 3)

2. On or about July 23, 2012, Respondent pled guilty in the United States District Court for the Southern District of New York to violating 18 USC § 1349, conspiracy to commit mail fraud and health care fraud. ( Ex. 4)
3. Respondent incorporated a medical clinic using his name and license which was actually run by non-physician owners and the purpose of which was to defraud no-fault insurance companies and workmen's compensation insurance companies. (Ex. 4; T. 10-21)
4. Respondent was sentenced by the court to thirteen months of incarceration, three years of supervised release with conditions, a one hundred dollar assessment, and seventy thousand dollars in restitution. (Ex. 4 )
5. In the fall of 2001, the Board for Professional Medical had disciplined Respondent for another conviction for a federal crime involving Respondent's claim of full disability while he was working part-time. (Ex. 5) See BPMC Order No. 01-164.

### **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. (T. 10-43) **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 appropriate sanction is a five year suspension, with the suspension stayed, and with probation and monitoring as described in the attached terms of probation (Appendix 2) for the term of the suspension. In addition, Respondent must complete fifty hours of Continuing Medical Education per year as described in the accompanying terms of probation.

The hearing committee decided on this sanction because the committee felt the Respondent was truly remorseful and because there were no issues of patient care. The committee was aware of Respondent's prior discipline but felt that it was unrelated to the conduct that brought him before the Board on this occasion. The committee was also cognizant of the fact that Respondent's involvement in the no-fault insurance fraud scheme lasted only four or five months, and that Respondent acknowledged that he should have been more careful in overseeing what was going on in the clinic incorporated under his license.

## **ORDER**

### **IT IS HEREBY ORDERED THAT:**

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.

2. Respondent is sanctioned with a **FIVE YEAR LICENSE SUSPENSION, STAYED, WITH PROBATION AND MONITORING FOR THE TERM OF THE SUSPENSION,** and **FIFTY HOURS OF CONTINUING MEDICAL EDUCATION IN EACH YEAR OF THE SUSPENSION.**

3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Section 230(10)(b).

DATED: Woodmere, New York  
December 29, 2014

REDACTED

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Steven L. Sherman, D.O., Chair

Mohammad-Reza Ghazi-Moghadam, M.D.  
William W. Walence, Ph.D.

To:

Ivan D. Baraque, M.D.

REDACTED

Mark L. Furman, Esq.  
Hoffman Polland & Furman, PLL  
220 E. 42<sup>nd</sup> St., Suite 435  
New York, N.Y. 10017

David W. Quist, Associate Attorney  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, N.Y. 12237

## APPENDIX 1

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

IN THE MATTER  
OF  
IVAN DARIO BARAQUE, M.D.  
CO-14-03-1708A

COMMISSIONER'S  
ORDER  
AND  
NOTICE OF  
REFERRAL  
PROCEEDING

TO: Ivan Dario Baraque, M.D.  
REDACTED

Ivan Dario Baraque, M.D.  
REDACTED

The undersigned, Howard A. Zucker, M.D., J.D., Acting 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 **IVAN DARIO BARAQUE, M.D.**, Respondent, licensed to practice medicine in New York State on January 28, 1985, by license number 161270, has been found guilty of committing an act constituting a felony under federal 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, **IVAN DARIO BARAQUE, 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.**

EXHIBIT

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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 18<sup>th</sup> day of September, 2014, at 10:30 a.m., at Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct.

Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health no later than ten days prior to the hearing. Any charge and allegation not answered shall be deemed admitted. Respondent may wish to seek the advice of counsel prior to filing such answer.

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.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing to

the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

**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 15, 2014

REDACTED

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

Inquiries should be addressed to:

David W. Quist  
Associate Attorney  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

**IN THE MATTER**  
**OF**  
**IVAN DARIO BARAQUE, M.D.**

**STATEMENT**  
**OF**  
**CHARGES**

IVAN DARIO BARAQUE, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 28, 1985, by the issuance of license number 161270 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about July 23, 2012, in the United States District Court for the Southern District of New York, Respondent was sentenced to thirteen months' imprisonment, to be followed by three years of supervised release, subject to various terms and conditions. Respondent was also directed to pay criminal monetary penalties in the amount of approximately \$100 as an assessment, and an additional amount of approximately \$70,000 in restitution. The sentence was based on a prior guilty plea to Count 1 of a Superseding Indictment in case S5 10 Cr. 821 (JGK) (also referred to as S5 1:10CR00821-003 (JGK) in the sentencing document). Count 1 consisted of conspiracy to commit mail fraud and health care fraud under 18 USC section 1349, a felony offense under federal law.

**SPECIFICATION OF CHARGES**  
**CRIMINAL CONVICTION (Federal)**

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: ~~June~~<sup>July</sup> 15, 2014  
Albany, New York

REDACTED

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Michael A. Hiser, Esq.  
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 then notify the Director again 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. Within thirty days of the effective date of this Determination and Order, Respondent shall practice medicine only when monitored by a licensed physician ("practice monitor"), board certified in an appropriate specialty, proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
  - a. Respondent shall be sole responsible for all expenses associate with monitoring, including fees, if any, to the monitoring physician.
  - b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

- c. 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 enroll in and successfully complete fifty hours of Continuing Medical Education (CME) in each year of his stayed suspension/probation. Each year, the CME must include at least sixty percent of Category 1 credits and the remainder must be Category 2 credits. Each year, Respondent must take at least twenty hours of CME in the area of internal medicine. In the first year of probation, Respondent must also take a CME course in medical billing. All such courses are subject to the prior written approval of the Director of the Office of Professional Medical Conduct and courses taken in the past may not be used to fulfill these CME requirements.
11. 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.