

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

**NEW YORK**  
state department of  
**HEALTH**

Public

Sue Kelly  
Executive Deputy Commissioner

August 8, 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael G. Bass, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2405  
Albany, New York 12237-0032

Ghulam Mustafa, M.D.  
REDACTED

**RE: In the Matter of Ghulam Mustafa, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 12-158) 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. 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 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

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

In the matter of

**Ghulam Mustafa, M.D.**  
NYS license # 247638

**Determination  
and Order**

BPMC #12-158

**COPY**

A notice of referral proceeding and statement of charges, both dated April 27, 2012, were served on Respondent **Ghulam Mustafa, M.D.** The statement of charges alleged violation of New York State Education Law 6530. A hearing was held at offices of the New York State Department of Health, Frear Building, One Fulton Street, Troy, New York, on June 13, 2012.

Pursuant to Public Health Law 230(10)(e), **Ravinder Mamtani, M.D.**, Chairperson, **Stanley Zinberg, M.D.**, and **Les Moore, N.D., MSOM, LAc.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. **John Harris Terepka**, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by **James E. Dering, Esq.**, General Counsel, and appeared by **Michael G. Bass, Esq.** **Ghulam Mustafa, M.D.**, (the Respondent) did not appear, although duly served with notice of the hearing. Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the hearing committee issues this determination and order.

**JURISDICTION**

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health (the Department), and authorized it to conduct disciplinary proceedings in matters of professional medical conduct.

Definitions of professional misconduct applicable to physicians, physician assistants and specialist assistants are set forth in Ed.L 6530 and 6531. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(a)(i)&(ii).

Pursuant to PHL 230(10)(p), a "direct referral procedure" is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

**EVIDENCE**

Witnesses for the Petitioner:	None
Petitioner exhibits:	Department Exhibits 1-7.
Witnesses for the Respondent:	None
Respondent exhibits:	Respondent Exhibits A-B.

A letter submitted by the Respondent was marked as ALJ Exhibit I.

A transcript of the hearing was made. (Transcript, pages 1-17.)

**FINDINGS OF FACT**

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Ghulam Mustafa, M.D. was authorized to practice medicine in New York State on February 14, 2008 under license number 247638. (Exhibit 4.)
2. On August 23, 2010, in the United States District Court, Western District of New York, the Respondent was found guilty, based upon a plea of guilty, of false statement relating to a health care matter, in violation of 18 USC 1035(a)(2). The Respondent was sentenced to probation for a term of two years, and ordered to pay restitution in the total amount of \$81,544,29. (Exhibit 5; Exhibit A.)
3. On March 14, 2011, in County Court of the State of New York, Orleans County, the Respondent was found guilty, based upon a plea of guilty, of grand larceny in the fourth degree, a class E felony, in violation of New York Penal Law 155.30(1). The Respondent was sentenced to five years of probation and two hundred hours of community service. (Exhibit 6.)

**HEARING COMMITTEE DETERMINATION**

After reviewing records obtained from the US District Court (Exhibit 5), the hearing committee unanimously determined that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(a)(ii) which defines professional misconduct, in pertinent part, as:

9. (a) Being convicted of committing an act constituting a crime under... federal law;

The hearing committee also unanimously determined, on the basis of the certificate of conviction from the Orleans County Court (Exhibit 6), that the Respondent violated Ed.L 6530(9)(a)(i) which defines professional misconduct, in pertinent part, as:

9. (a) Being convicted of committing an act constituting a crime under... New York state law.

The Petitioner recommended revocation of the Respondent's license. (Transcript, page 12.)

Records from the US District Court indicate that the federal conviction in this case arose from the Respondent's billing of health care programs for the administration of vaccine that had been provided to him free of charge and intended to be provided free of charge to Medicaid recipients. (Transcript, pages 10, 13; Exhibit 7; Exhibit A.) Documentary evidence submitted by the Respondent himself indicates that the New York State conviction was also for criminal acts committed in connection with his practice of medicine. (Exhibit B.)

The hearing committee agreed that the convictions in this case established that the Respondent lacks the integrity required of a person licensed to practice medicine in New York. The Respondent failed to appear personally, and the evidence he submitted failed to persuade the committee to a different conclusion. (Exhibits A, B; ALJ Exhibit I.) The hearing committee determined that revocation of the Respondent's license pursuant to PHL 230-a(4) is an appropriate penalty.

The hearing committee's vote sustaining the charges and revoking the Respondent's license was unanimous (3-0).

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in New York State is **REVOKED**.

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

Dated: Albany, New York

By: REDACTED *Aug 4, 2012*  
Ravinder Mamtani, M.D.  
Chairperson  
  
Stanley Zinberg, M.D.  
Les Moore, N.D., MSOM, LAc.

To: Michael G. Bass, Esq., Assistant Counsel  
Bureau of Professional Medical Conduct  
Corning Tower, Empire State Plaza  
Albany, New York 12237-0032

Ghulam Mustafa, M.D.

REDACTED

# **APPENDIX I**



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

**IN THE MATTER**  
**OF**  
**GHULAM MUSTAFA, M.D.**  
**CO-11-03-1346-A**

**COMMISSIONER'S  
ORDER  
AND  
NOTICE OF  
REFERRAL  
PROCEEDING**

**TO: GHULAM MUSTAFA, M.D.**  
REDACTED

The undersigned, Nlrav R. Shah, M.D., M.P.H., 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 **GHULAM MUSTAFA, M.D.**, Respondent, licensed to practice medicine in the State of New York on February 14, 2008, by license number 247638, has been convicted of committing an act constituting a felony under New York State law, in the Orleans County Court of the State of New York, Orleans County, New York, and convicted of a crime under Federal law, in United States District Court, Western District of New York, 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), effective immediately **GHULAM MUSTAFA, 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 13<sup>th</sup> day of June, 2012, at 10:30 a.m., at Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, New York 12180, 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.

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. 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, 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  
Apr 27, 2012

REDACTED

---

NIRAV R. SHAH, M.D., M.P.H.  
Commissioner of Health  
New York State Department of Health

Inquires should be addressed to:

Joel E. Ablove  
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

---

IN THE MATTER  
OF  
GHULAM MUSTAFA, M.D.  
CO-11-03-1346-A

---

STATEMENT  
OF  
CHARGES

GHULAM MUSTAFA, M.D., Respondent, was authorized to practice medicine in New York State on February 14, 2008, by the issuance of license number 247638 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about August 23, 2011, in the United States District Court, Western District of New York, Respondent was found guilty, based on a plea of guilty, of False Statement Relating To Health Care Matter, in violation of 18 U.S.C. §1035(a)(2), and was sentenced to two (2) years probation and \$81,544.29 restitution.

B. On or about March 14, 2011, in County Court of the State of New York, Orleans County, New York, Respondent was found guilty, based upon a plea of guilty, of Grand Larceny in the Fourth Degree, a class E felony, in violation of New York State Penal Law §155.30(1), and on or about August 29, 2011 Respondent was sentenced to five (5) years probation, two hundred (200) hours of community service and a \$50.00 DNA fee.

**SPECIFICATIONS**

**FIRST SPECIFICATION**

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

1. The facts in paragraph A.

**SECOND 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 B.

DATED: *April 27*, 2012  
Albany, New York

REDACTED

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