



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 24, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – Fourth Floor
Troy, New York 12180

David E. Ruck, Esq.
One Whitehall Street
New York, New York 10004-2109

Adeliya Isaakovna Akpan, M.D.
31-11 Ocean Parkway
Penthouse F
Brooklyn, New York 11235

Howard H. Weswasser, Esq.
225 Broadway
Suite 1203
New York, New York 10007

Adeliya Isaakovna Akpan, M.D.
3039 Ocean Parkway
Brooklyn, New York 11235

RE: In the Matter Adeliya Isaakovna Akpan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-293) 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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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.

167698

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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

DETERMINATION

AND

ORDER

BPMC-99-293

COPY

IN THE MATTER

OF

ADELIYA ISAAKOVNA AKPAN, M.D.

A Notice of Referral Proceedings August 5, 1999 and a Statement of Charges, dated, August 4,, 1999, were served upon the Respondent, **ADELYA ISAAKOVNA, M.D.**

TERESA BRIGGS, M.D., Chairperson, **STEVEN LAPIDUS, M.D.** and **SR. MARY THERESA MURPHY**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10(e) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 28, 1999, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **DAVID E. RUCK, ESQ.**, One Whitehall Street, New York, New York 10004-2109 and **HOWARD H. WESWASSER, ESQ.**, 225 Broadway, Suite 1203, New York, New York 10007.

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 Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such case, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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 Section 6530(9)(a)(ii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner: None

For the Respondent:

1. Adeliya Isaakovna Akpan, M.D., The Respondent
2. Supervising Agent (FBI) Timothy Delaney
3. Howard H. Weiswasser, Esq.
4. Deputy Asst. U.S. Attorney General Gordon Mehler

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular findings. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise stated.

1. **ADELIYA ISAAKOVNA AKPAN, M.D.**, the Respondent, was authorized to practice medicine in New York on August 28, 1986, by the issuance of license number 167698 by the New York Education Department. (Pet's. Ex. 3)

2. On May 13, 1999, in the United States District Court, Southern District of New York, the Respondent was found guilty of Medicare Fraud Conspiracy, in violation 18 USC 371, and was sentenced to pay \$2,500,000 restitution, to be paid jointly and severally with co-defendants to the U.S. Department of Health & Human Services, and she was place on three years probation. (Pet's. Ex. 4)

HEARING COMMITTEE CONCLUSION

The Hearing Committee concludes that the Respondent violated New York Education §6530(9)(a)(ii) by having been convicted of an act constituting a crime under federal law.

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

Respondent violated New York Education §6530(9(a)(ii) by having been convicted of an act constituting a crime under federal law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

There is no disputing that the bare facts of this case are as stated in the Statement of Charges, that is, "On or about May 13, 1999, in the United States District Court, Southern District of New York, Respondent was found guilty of Medicare Fraud Conspiracy, in violation of 18 USC 371, and was sentenced to pay \$2,500,000 restitution and placed on three years probation."

But that is only part of this astounding story. The details behind those charges were supplied at the hearing through the testimony of the Respondent herself, Howard W. Weiswasser, Esq., her attorney for the federal case, Timothy Delaney, Supervising Agent of the Federal Bureau of Investigation – Fraud Unit, who directed the investigation of the federal case, and Deputy Assistant United States Attorney General Gordon Mehler who prosecuted the case on behalf of the federal government.

The Respondent is a Russian born and educated physician who emigrated to the United States and eventually established a geriatric medical practice among Russian immigrants in the Brighton Beach section of Brooklyn, New York.

The Respondent was approached by the owner's of a durable medical equipment supply firm and entered into an arrangement whereby she would receive a fifty dollar (\$50.00) kick back for every prescription she wrote for durable medical equipment which was subsequently filled by the supply firm, and in addition, the supply firm would steer additional patients to her medical practice.

The Respondent entered this arrangement knowing that it was wrong, but she did not know that her signature would be used above and beyond the prescriptions forms she signed. Over a period of time she received a monetary benefit of approximately ten thousand dollars (\$10,000) from this arrangement, but the evidence indicates that she ordered only that equipment which was medically needed by the patient.

At the time, the F.B.I. was investigating the widespread Medicare Fraud in the Brighton Beach area and became aware of the Respondents activities.

The F.B.I. decided to approach the Respondent because they needed a "cooperator" to help in their investigation. They approached the Respondent and revealed the evidence they had concerning her participation in the fraudulent scheme. She readily agreed to cooperate in the investigation, without being pressured and without bargaining, even so far as to allowing F.B.I surveillance cameras to be set up in her office and to the taping of hundreds of conversations she had with those involved in the conspiracy, all at considerable personal risk. Many of these individuals were specifically sent to her by the F.B.I.

According to Supervising Agent Delaney, and Deputy Assistant U.S. Attorney General Mehler, both of whom voluntarily testified on the Respondent's behalf, the Respondent gave full cooperation to the federal authorities and supplied excellent and extremely important information which had a significant impact in reducing the amount of

durable medical equipment fraud in the Brighton Beach section of Brooklyn, saving tens of millions of taxpayer dollars for the federal government. They also testified that they were convinced that the Respondent was not aware of the scope and depth of the illegal conspiracy.

The fact that Mr. Mehler traveled from Washington, D.C. and Agent Delaney traveled from New York City to testify at the hearing, demonstrates the unique relationship that developed between the Respondent and these government agents and her extraordinary degree of cooperation.

With regard to the two million, five hundred thousand dollars (\$2,500,000) restitution ordered by the court, the payment is to be made jointly and severally by the co-defendants, meaning that to the extent that the co-defendants pay or have paid their restitution, the defendant's obligation is diminished thereby.

There were approximately twenty co-defendants in the federal case, some of whom are now in jail.

To date, the Respondent has made restitution in the amount of approximately one-half million dollars (\$500,000) and continues to make payments amounting to ten percent of her gross monthly income.

The Hearing Committee was very impressed not only with the testimony of the two very credible and very informed federal authorities, but also with the fact that they traveled long distances to be present at the hearing in support of the Respondent.

The Hearing Committee is completely convinced that the Respondent not only took extraordinary steps at great personal risk to make amends for her misdeeds, but that she is also truly contrite for her wrongdoing, as evidenced by the fact that she continued to cooperate with the F.B.I., even after having been sentenced by the Federal Court.

The Hearing Committee is also aware that the Respondent's misdeeds are serious and cannot be overlooked, even considering the mitigating circumstances in this case.

The Hearing Committee determines that the Respondent's license to practice medicine in the State of New York should be **SUSPENDED** for a period of three (3) years, **SUSPENSION STAYED**, and the Respondent be put on probation under term and conditions hereinafter specified in the ORDER.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for a period of three (3) years, **SUSPENSION STAYED**, and the Respondent is placed on probation for a period to coincide with the probation imposed by the United States District Court, Southern District of New York, under the following term and conditions.

- a. The Respondent shall comply with all the terms and conditions of probation as prescribed by the Federal Court.
- b. The Respondent shall cause her federal probation officer to submit semi-annual reports to the Office of Professional Medical Conduct reporting on her compliance or failure to comply with any of the terms of her federal probation.

- c. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against the Respondent as may be authorized pursuant to the law.

This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: *Albany*, New York

Nov 19, 1999


TERESA BRIGGS, M.D.
Chairperson

STEVEN LADIDUS, M.D.
SR. MARY THERSEA MURPHY



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

**IN THE MATTER
OF
ADELIYA ISAAKOVNA AKPAN, M.D.**

NOTICE
OF
REFERRAL
PROCEEDING

TO: ADELIYA ISAAKOVNA AKPAN, M.D.
31-11 Ocean Parkway, Penthouse F
Brooklyn, NY 11235

ADELIYA ISAAKOVNA AKPAN, M.D.
3039 Ocean Parkway
Brooklyn, NY 11235

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 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 2nd day of September, 1999 at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

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. You may produce evidence or sworn testimony on your behalf. Such evidence 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 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 23, 1999.

Pursuant to the provisions of N.Y. 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 later than ten days prior to 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 an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before August 23, 1999 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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 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
August 5, 1999



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

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180
(518)402-0820

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

**IN THE MATTER
OF
ADELIYA ISAAKOVNA AKPAN, M.D.**

**STATEMENT
OF
CHARGES**

ADELIYA ISAAKOVNA AKPAN, M.D., the Respondent, was authorized to practice medicine in New York state on August 28, 1986, by the issuance of license number 167693 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 13, 1999, in the United States District Court, Southern District of New York, Respondent was found guilty of Medicare Fraud Conspiracy, in violation of 18 USC 371, and was sentenced to pay \$2,500,000.00 restitution and placed on three years probation.

SPECIFICATION

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

1. The facts in paragraphs A.

DATED: *August 4*, 1999
Albany, New York

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