



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

Public

February 4, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Emma Benjamin, M.D.
6411 99th Street
Apartment 604
Rego Park, New York 11374

Peter Chavkin, Esq.
Mintz Levin, P.C.
666 Third Avenue
New York, New York 10017

Jude Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Emma Benjamin, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-17) 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.

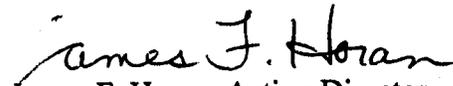
The notice of review served on the Administrative Review Board should be forwarded to:

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,


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
EMMA BENJAMIN, M.D.

DETERMINATION
AND
ORDER
BPMC #08-17

A hearing was held on January 24, 2008, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding dated April 9, 2007, and an Amended Statement of Charges dated November 1, 2007, were served upon the Respondent, **Emma Benjamin, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Peter B. Kane, M.D.**, Chairperson, **Cindy Hoffman, D.O.**, and **Janet Miller, R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **William Lynch, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Jude Mulvey, Esq.**, of Counsel. The Respondent appeared at the hearing and was represented by Mintz Levin, PC, **Peter A. Chavkin, Esq.**, of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

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 Section 6530(9)(a)(i). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1. The Commissioner issued an Order pursuant to Public Health Law Section 230(12)(b), which prohibited the Respondent from practicing medicine in the State of New York until the final conclusion of the hearing in this matter.

WITNESSES

For the Petitioner:

None

For the Respondent:

Emma Benjamin, 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. Emma Benjamin, M.D., the Respondent, was authorized to practice medicine in New York State on December 17, 1997, by the issuance of license number 209190 by the New York State Education Department (Petitioner's Ex. 4).

2. On or about September 13, 2006, in the Supreme Court of the State of New York, Queens County, New York, Respondent was found guilty, of Falsifying Business Records in the first degree, in violation of New York Penal Law section 175.10, a class E felony, and was sentenced to a three year conditional discharge, a \$10.00 CVAF, and a \$200.00 surcharge.

3. On or about June 11, 2007, in the Criminal Court of the City of New York, County of Queens, New York, Respondent was found guilty, based on a plea of guilty, of three counts of Insurance fraud in the fifth degree, in violation of New York Penal Law section 176.10, a class A misdemeanor, and was sentenced to one year conditional discharge.

VOTE OF THE HEARING COMMITTEE

FIRST AND SECOND SPECIFICATIONS

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent admitted the factual allegation and did not contest the charge specified in the Statement of Charges. She explained the circumstances surrounding her immigration to the United States as a political refugee, her medical licensure and training

in New York and her employment history. She testified that the criminal conviction relates to employment which she began one day per week with a medical clinic in Queens, New York, in January 2003. She noticed that changes were made to her reports, and she realized that the changes had been made to substantiate a reason for nerve induction studies so as to fraudulently increase the clinic's billing. Nonetheless, she continued her role with the fraudulent practice at the clinic until April 2003 when she was able to commence employment elsewhere. Petitioner recommended that Respondent's license be revoked.

Respondent acknowledged her misconduct stating that she wrongly succumbed to economic pressures during the four months of employment at issue. She expressed remorse for her actions and asked the Hearing Committee to consider her otherwise unblemished medical career. The affidavits and letters others wrote on Respondent's behalf attest to her skill and dedication as a physician, her compassion and her remorse. In addition, the judge who had sentenced Respondent for her felony conviction issued a Certificate of Relief from Disabilities on September 5, 2007. Respondent also offered evidence that she completed several continuing medical education courses during the period of her suspension.

The Hearing Committee recognizes that the commission of a felony related to insurance fraud is a serious matter that damages the integrity of the medical care system and that the penalty for such conduct should serve as a punishment and deterrent. After careful consideration of all the evidence and the full range of penalties available, the Hearing Committee unanimously concludes, however, that the license revocation recommended by the Department is not necessary or appropriate to meet these objectives, given the evidence presented by Respondent. The conduct at issue was

limited to a four-month period during which Respondent was paid on an hourly basis, for a position at a clinic where she worked one day per week. There was no evidence that Respondent benefited financially from her misconduct, and the fact that the court required no incarceration or restitution and issued a Certificate of Relief from Disabilities is consistent with Respondent's testimony that she received no benefit from the fraud other than an hourly wage. The Hearing Committee felt that Respondent was sincere when she testified regarding her remorse and her assurance that she will not repeat the misconduct.

The Hearing Committee concludes that Respondent's license to practice medicine should be suspended for the period of time from the issuance of the Commissioner's Order on April 9, 2007, until the effective date of this Order. The Hearing Committee also determines that Respondent should be placed on probation for a three-year period. During the probationary period, Respondent should be required to have a billing monitor who reviews Respondent's patient and billing records and submits written reports to the Director of the Office of Professional Medical Conduct ("OPMC"). The OPMC should also have the ability to review patient and billing records on a random unannounced basis. There would, however, be no requirement for a billing monitor if Respondent only practices medicine as an employee of a medical facility that the government operates or that the government licenses. Such employment would remove Respondent from billing responsibility and assure supervision and oversight.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice medicine is suspended for the period of time from the issuance of the Commissioner's Order on April 9, 2007, until the effective date of this Order;

2. Respondent is placed on probation for three years. The probation is stayed until Respondent returns to the active practice of medicine in New York State. The terms of probation are as follows:

- a. Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by her profession.
- b. 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.
- c. 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.

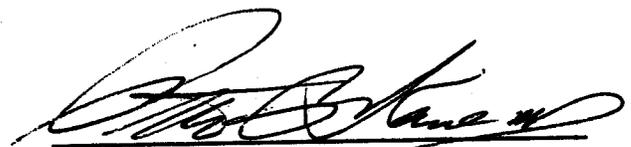
- d. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent intends to leave the active practice of medicine in New York State for a period 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.
- e. 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.
- f. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
- g. With the exception of the practice of medicine as an employee of a medical facility that the government operates or that the government licenses, Respondent shall practice medicine with a billing monitor. The billing monitor shall be proposed by Respondent and subject to the prior written approval of the Director. Respondent shall authorize the billing monitor to have access to her patient and billing records, and Respondent shall ensure that the billing monitor submits quarterly written reports to the Director of OPMC. The Director of OPMC may require access to each and every location at which

Respondent practices medicine on a random unannounced basis to examine a selection of medical and billing records to assure that Respondent remains in compliance with the probation terms.

h. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which she is subject pursuant to the Order and shall assume and bear all costs related to compliance. 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 Respondent as may be authorized pursuant to the law.

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

DATED: Cazenovia, New York
1/30/08, 2008



Peter B. Kane, M.D.
Chairperson

Cindy Hoffman, D.O.
Janet Miller, R.N.

APPENDIX I

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



IN THE MATTER
OF
EMMA BENJAMIN, M.D.
FR-05-01-0191-C

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: EMMA BENJAMIN, M.D.
6411 99th Street
Apt. 604
Rego Park, NY 11374

The undersigned, Richard F. Daines, M.D., 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 **EMMA BENJAMIN, M.D.**, Respondent, licensed to practice medicine in the State of New York on December 17, 1997, by license number 209190, has been convicted of committing an act constituting a felony under New York State 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), effective immediately **EMMA BENJAMIN, M.D.**, Respondent, 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. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law §230(12).

Any practice of medicine in the State of New York in defiance of this Commissioner's Order shall constitute Professional Misconduct within the meaning of N.Y. Education Law §6530(29) and may constitute unauthorized medical practice, a felony, defined by N.Y. 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 20th day of June, 2007, at 10:00 a.m., at Hedley Park Place, 433 River Street, 5th 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. Respondent has the right to produce witnesses and evidence on her behalf, to issue or have subpoenas issued on her behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against her. 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. SEAN D. O'BRIEN, 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.

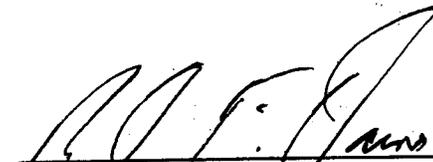
At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may 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 17

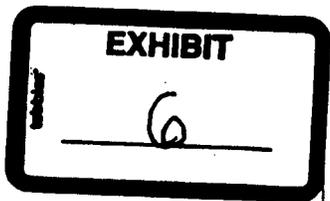
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RICHARD F. DAINES, M. D.
Commissioner of Health

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, New York 12180
(518) 402-0828



AMENDED
STATEMENT
OF
CHARGES

IN THE MATTER
OF
EMMA BENJAMIN, M.D.
FR-05-01-0191-C

EMMA BENJAMIN, M.D., Respondent, was authorized to practice medicine in New York state on December 17, 1997, by the issuance of license number 209190 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 13, 2006, in the Supreme Court of the State of New York, Queens County, New York, Respondent was found guilty, based on a plea of guilty, of Falsifying business records in the first degree, in violation of New York Penal Law §175.10, a class E felony, and was sentenced to a three (3) year conditional discharge, a \$10.00 CVAF, and a \$200.00 surcharge.

B. On or about June 11, 2007, in the Criminal Court of the City of New York, County of Queens, New York, Respondent was found guilty, based on a plea of guilty, of three (3) counts of Insurance fraud in the fifth degree, in violation of New York Penal Law §176.10, a class A misdemeanor, and was sentenced to a one (1) year conditional discharge.

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

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.
2. The facts in Paragraph B.

DATED: *Nov. 1*, 2007
Albany, New York

A handwritten signature in black ink that reads "Peter D. Van Buren".
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct