

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

PUBLIC

October 22, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rodney Baltazar, D.O.

Redacted Address

Peter D. Van Buren, Esq.
NYS Department of Health
ESP- Corning Tower - Room 2509
Albany, New York 12237

RE: In the Matter of Rodney Baltazar, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-201) 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 Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER
OF
RODNEY BALTAZAR, D.O.

DETERMINATION
AND
ORDER

BPMC #10-201

COPY

A hearing was held on September 23, 2010, 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 April 19, 2010, were served upon the Respondent, RODNEY BALTAZAR, D.O.

Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon Greenberg, M.D., Chair, John D. Thomas, II, M.D., and Janet M. Miller, R.N.**, 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 **Thomas G. Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent, **Rodney Balthazar, D.O.**, did appear, *pro se*.

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

In the instant case, the Respondent is charged with three specifications of professional misconduct. In these specifications, Respondent is charged with having violated New York Education Law §6530(9)(c), §6530(16), and §6530(42), by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct under the laws of New York state, in that Petitioner charges the Respondent with failing to pay some \$117,090.79 in student loans and subsequent default on a repayment agreement. The amount due had increased to \$138,404.44 by October 7, 1998.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Dr. Rodney Baltazar

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. **RODNEY BALTAZAR, D.O.**, the Respondent, was authorized to practice medicine in New York State on August 2, 1995, by the issuance of license number 200349 by the New York State Education Department (Petitioner's Ex. 4).

2. On August 27, 1993, In New York Supreme Court, Queens County, a default judgment was entered against the Respondent requiring him to pay \$117,090.79 in repayment on Student Loans on which he had defaulted. (Petitioner's Ex. 5).

3. The Respondent borrowed approximately \$81,260.00 by entering into six Promissory Notes through the Health Education Assistance Loan Program (HEAL). The loans were granted by the Kirksville College of Osteopathic Medicine and Valley National Bank during the period of 11/9/87 through 12/29/92. As of 10/21/93, the Respondent owed \$117,853.00 including the principal and accumulated interest. On 10/10/95 a civil court Judgment on Default was entered against Respondent BALTAZAR on behalf of the Sallie Mae Loan Student Loan Marketing Association in the amount of \$117,090.79. (Petitioner's Ex. 5).

4. The Respondent was excluded from participation in Medicare and any State health care program including Medicaid. On 10/7/98 Respondent BALTAZAR entered into a Settlement Agreement by which he agreed to make payments pf \$650.00 per month toward the debt. BALTAZAR's exclusion was stayed accordingly. During the period of 5/6/99 through 9/11/07 BALTAZAR made periodic payments totaling \$32,450.00. He made no payments from 9/12/07 though 11/13/09 and his current liability

totals \$142,355.28. Respondent BALTAZAR was again excluded from Medicare participation effective 2/6/09. (Petitioner's Ex. 5).

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, *pro se*, without counsel. The Administrative Law Judge had adjourned a previous hearing in this matter to give the Respondent the opportunity to obtain counsel. At the present hearing the Respondent was again afforded the opportunity to obtain counsel, but indicated that he did not have the funds to do so and elected to proceed *pro se*. The Administrative Law Judge allowed him to proceed, ruling that there was jurisdiction by personal service (Petitioner's Ex. 2)

There was no dispute about the basic fact in this case and the Respondent candidly acknowledged that he owed this money and had defaulted on this obligation. The Respondent admitted that he entered into these agreements back in the 1990's and that, in subsequent years, he did not make the default payments as required.

The Hearing Committee concludes that the conduct of the Respondent constitutes professional misconduct under the laws of New York State, specifically, New York Education Law Section 6530(42) - "failing to comply with any agreement entered into to aid his medical education."

The Respondent offered several explanations for his conduct. The panel found that these explanations were helpful in determining an appropriate penalty. To begin with, the panel found the Respondent to be candid, frank, persuasive, and sympathetic. After an initial default, it appears that the Respondent had been making payments on a regular

basis for nine years on these loans. He again went into default in 2008 and he offered a plausible explanation for this second failure.

The Respondent explained that he has five children and has significant child support obligations. Until recently, he had been obliged to pay some \$3,500 per month in child support. The Respondent testified that this obligation has only recently been reduced by court order. The Respondent indicated that his financial problems were exacerbated by an embezzlement of his funds by an employee and that this embezzlement had gone on for some five years.

The Respondent indicated that his financial affairs are now in order and that, despite his preclusion from Medicare and Medicaid for these defaults, he will be able to start again with repayments by making payments of \$650 a month and that this agreement is presently in the final stages of settlement with the Health Education Assistance Loan Program or its successors.

After considering the full range of penalties, the panel, unanimously, found this failure to pay his student loans to be misconduct and deemed a stayed suspension, coupled with a probation to be the appropriate penalty. The panel directed that a condition of this probation be that the Respondent make the new agreed payments of \$650 a month on this debt and, should he again default, the Department may reinstitute disciplinary proceedings.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct under the laws of New York state, in that Petitioner charges the Respondent with failing to pay some \$117,090.79 in student loans and subsequent default after a court order for repayment entered on August 27, 1993 in New York State Supreme Court, Queens County.

VOTE: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law Section 6530(16) by failing to comply with substantial provisions of federal, state or local rules, or regulations governing the practice of medicine by failing to comply with any agreement entered into to aid his or her medical education.

VOTE: Sustained (3-0)

THIRD SPECIFICATION

Respondent violated New York Education Law Section 6530(42) by failing to comply with any agreement entered into to aid his medical education, in that Petitioner charges him with failing to repay his medical student loans as required by law.

VOTE: Sustained (3-0)

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is suspended for five years and this suspension is stayed.
2. The Respondent is placed on probation, the terms of which are attached hereto as Appendix 2, for a period of five years.
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: Albany, New York
October 21, 2010**

Redacted Signature

Lyon Greenberg, M.D., Chair,

**John D. Thomas, II, M.D.
Janet M. Miller, R.N.**

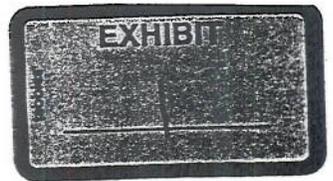
**To:
Rodney Baltazar, D.O.,**

Redacted Address

**Peter D. Van Buren, Esq.
Attorney for Petitioner
Deputy Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299**

Appendix 1

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



IN THE MATTER
OF
RODNEY BALTAZAR, D.O.
CO-09-04-2200-A

NOTICE
OF
HEARING

TO: RODNEY BALTAZAR, D.O.

Redacted Address

PLEASE TAKE NOTICE:

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 June 24th, 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 , and at such other adjourned dates, times, and places as the committee may direct.

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. You 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. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A Summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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, (henceforth "Bureau of Adjudication"), (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. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of actual engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of New York Public Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten 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. 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 the 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 or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department Attorney: Initial here



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 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 OUT 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
April 19, 2010

Redacted Signature

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

Inquiries should be directed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, NY 12180
(518) 402-01828

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

IN THE MATTER
OF
RODNEY BALTAZAR, D.O.
CO-09-04-2200-A

STATEMENT
OF
CHARGES

RODNEY BALTAZAR, D.O., Respondent, was authorized to practice medicine in New York state on August 2, 1995, by the issuance of license number 200349 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 27, 1993, in the Supreme Court of the State of New York, County of Queens, New York, Respondent was required to pay \$117,090.79 to the student loan Marketing Assessment for repayment of student loans, funded through the Health Education Assistance Loan Program of the United States Department of Health and Human Services, on which he had defaulted.

B. On or about October 7, 1998, by a Settlement Agreement, finalized on or about December 13, 1998, Respondent agreed to pay \$138,404.44 and interest at the rate of 3.43% per annum until the total debt is paid in full, based on the amount owing, as set forth in Paragraph A, above, by making payments of at least \$650.00 per month due on the fifteenth day of each month, beginning October 15, 1998 and continuing at such monthly amounts until notified otherwise by amendment to the agreement issued by the Department of Justice (DOJ).

C. From on or about October 6, 1998, on numerous occasions, Respondent failed to make required payments and/or made payments late and from on or about 2007 Respondent has made no payments as required by the Settlement Agreement set forth in Paragraph B, above.

D. On or about March 31, 2009, the United States of America, Office of Inspector General, Department of Health & Human Services, (hereafter "USA"), by letter, excluded Respondent from participation in Medicare, Medicaid, and all Federal health care programs,

effective February 6, 2009, based on his having defaulted on his repayment agreement to repay his Health Education Assistance Loan debt, based on his obligations as set forth in Paragraphs A and B, above.

E. The conduct resulting in the USA action described in Paragraph A, above, would constitute misconduct under the laws of New York State, pursuant to the following section of New York State law:

1. New York Education Law §6530(16) (failure to comply with substantial provisions of federal, state, or local rules, or regulations governing the practice of medicine); and/or
2. New York Education Law §6530(42) (failing to comply with any agreement entered into to aid his medical education).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A, B, and/or E.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(16) by failing to comply with substantial provisions of federal, state, or local rules, or regulations governing the practice of medicine, in that Petitioner charges:

2. The facts in Paragraphs A, B, C, D, and/or E.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(42) by failing to comply with any agreement entered into to aid his medical education if committed in New York state, in that Petitioner charges:

3. The facts in Paragraphs A, B, C, D, and/or E.

DATED: *April 19*, 2010
Albany, New York

Redacted Signature

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

Appendix 2

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. 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.
5. Respondent shall make repayments on his loan obligation with payments of \$650 or such other sum by agreement with the Health Education Assistance Loan Program or its successors and give written authorization to such lender to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with his loan obligations.
6. In the event the Respondent is not in compliance with his loan obligations, OPMC may reinstitute disciplinary proceedings.