



Public
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

July 9, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Diab, RPA-C

REDACTED

John Diab, P.A.

REDACTED

Robert Bogan, Esq.
NYS Department of Health
ESP – Corning Tower – Room 2512
Troy, New York 12180-2299

RE: In the Matter of John Diab, P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-123) 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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., 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

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
JOHN DIAB, P.A.

DETERMINATION
AND
ORDER

BPMC #10-123

COPY

A hearing was held on June 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 February 3, 2010, were served upon the Respondent, **John Diab, P.A.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D.**, Chairperson, **Arsenio Agopovich, M.D.**, and **Dennis Zimmerman, M.S.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **William J. Lynch, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing, either in person or by counsel, but Respondent did send a letter to the Board.

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 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)(b) and 6530(9)(d). 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: None

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. John Diab, P.A., the Respondent, was authorized to practice as a physician assistant in New York State on March 13, 2007, by the issuance of license number 011783 by the New York State Education Department (Petitioner's Ex. 4).

2. By certified letter dated August 14, 2007, the State of California, State and Consumer Services Agency, Physician Assistant Committee ("California Board"), denied Respondent's application for physician assistant licensure based on his having been convicted of three crimes and his having failed to report those convictions on his application for licensure. Respondent appealed the denial. (Petitioner's Ex. 5).

3. In a decision dated February 11, 2009 following an administrative hearing, the California Board again denied Respondent's application for a physician assistant license. The California Board found that Respondent had been convicted of false identification to a police officer on two occasions and willfully delaying, obstructing and resisting a peace officer on a third occasion. The decision concluded that cause existed to deny Respondent's application for a California license based upon these convictions and upon Respondent's intentional failure to disclose them at the time of his application for a license (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that Respondent's conduct would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(1) – (obtaining the license fraudulently);

- New York Education Law Section 6530(9)(a)(i) – (having been convicted of committing an act constituting a crime under state law);
- New York Education Law Section 6530(20) – (moral unfitness); and
- New York Education Law Section 6530(21) – (willfully making or filing a false report.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state...”

VOTE: Sustained (3-0)

SECOND SPECIFICATION

“Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine revoked by a duly authorized professional disciplinary agency of another state, where the conduct would, if committed in New York state, constitute professional misconduct under the laws of New York state...”

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

Petitioner established that Respondent was personally served with the Notice of Referral Proceeding and Statement of Charges. Therefore, the hearing proceeded in spite of his absence.

The record indicates that California considered a letter submitted by the Respondent during his appeal of that Board's denial of his licensure application. In his letter to the California Board, Respondent alleged that he possibly had mailed his application without an attachment that described his criminal convictions because the application and its attachments had fallen to the floor of his car when he was forced to brake abruptly on his way to the post office. Due to Respondent's history of providing false information to law enforcement, the California Board found that his explanation was not credible.

A letter from the Respondent to the New York State Department of Health Office of Professional Medical Conduct received on June 21, 2010 was admitted into evidence in this proceeding. In the letter, Respondent describes his childhood, his education and his criminal convictions. Respondent states that he did poorly in school as a child because he suffered from Attention Deficit Disorder and Dyslexia. He contends that his first arrest occurred after a bench warrant was issued because he did not appear before the Court on a traffic ticket. About a year later, he was arrested when he gave a false name to a police officer who had pulled him over, having raised the officer's suspicion by misspelling the name he had given. Then when his license was suspended for a drinking while driving infraction, the Respondent obtained a license with a false name on it from the Department of Motor Vehicles with the assistance of one of his friends. A few months later, he was caught and arrested again. He further alleges that he subsequently

enrolled in college where he made the Dean's list and was accepted into a PA school at age 45.

In his letter, Respondent proceeds to admit that his failure to disclose his convictions to the California Board was not accidental. He states,

When it came time to fill out applications for licensure in various States I was hoping that since I never hurt anyone or had a felony on my record, that the aforementioned violations should not be included. This I realize now to be the biggest mistake I have made to date (Ex. A).

The Hearing Committee notes that Respondent was forty-seven years of age when he submitted these fraudulent applications for licensure. The quality assurance system in New York depends on an honest review of physician credentials and criminal history to prevent exposing patients to unqualified or unsafe practitioners. Based upon Respondent's repeated incidents of making false representations to governmental entities that has extended far into adulthood, the Committee concludes that Respondent's misconduct does not represent merely an aberrant instance of poor judgment in presenting his credentials. Instead, the Committee concludes that Respondent lacks the integrity needed to be truthful in his practice as a physician assistant and poses a danger to commit other acts of fraud.

The Hearing Committee agrees with the recommendation by Petitioner that Respondent's license also be revoked in New York. No other penalty will sufficiently protect the people of this State.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice as a physician assistant in New York State is revoked.
2. 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
July 9, 2010

REDACTED

LYON M. GREENBERG, M.D.
Chairperson

Arsenio Agopovich, M.D.
Dennis Zimmerman, M.S.

TO: John Diab, RPA-C
REDACTED

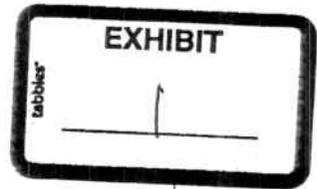
John Diab, P.A.

REDACTED

Robert Bogan, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Room 2412
Albany, New York 12237

APPENDIX 1

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



IN THE MATTER
OF

JOHN DIAB, P.A.
CO-09-03-1690-A

NOTICE OF
REFERRAL
PROCEEDING

TO: JOHN DIAB, P.A.
REDACTED

JOHN DIAB, P.A.
REDACTED

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§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 17th day of March, 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.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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 that 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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) 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. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated 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 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here

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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 (5) 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

February 3, 2010

REDACTED

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

Inquiries should be addressed to:

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

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

IN THE MATTER

OF

JOHN DIAB, P.A.
CO-09-03-1690-A

STATEMENT

OF

CHARGES

JOHN DIAB, P.A., Respondent, was authorized to practice as a physician assistant in New York State on March 13, 2007, by the issuance of license number 011783 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 14, 2007, the State of California, State and Consumer Services Agency, Physician Assistant Committee (hereinafter "California Board"), by a certified mail letter (hereinafter "California Letter"), denied Respondent's application for physician assistant licensure, based on being convicted of a crime; having done an act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; having done any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license; and having knowingly made a false statement of fact required to be revealed in the application for such license.

B. The conduct resulting in the California Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York State Education Law §6530(1) (obtaining the license fraudulently);
2. New York State Education Law §6530(9)(a)(i) (having been convicted of committing an act constituting a crime under state law);
3. New York State Education Law §6530(9)(a)(iii) (having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under state law);
4. New York Education Law §6530(20) (moral unfitness); and/or

5. New York Education Law §6530(21) (willfully making or filing a false report required by law or by the department of health or the education department).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having his application for a license refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

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

DATED: *February 3*, 2010

REDACTED

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