

Public



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

December 3, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Zen Jackson, Esq.
Kalison, McBride, Jackson &
Murphy
25 Independence Boulevard
Warren, New Jersey 07059

Vishwamintra Persuad, M.D.
308 A East 15th Street
New York, New York 10003

Robert Bogan, Esq. &
Michael Bass, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Vishwamintra Persuad, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-229) 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 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

COPY

IN THE MATTER
OF
VISHWAMINTRA PERSAUD, M.D.

DETERMINATION
AND
ORDER

BPMC #08-229

A hearing was held on November 19, 2008, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding, dated September 29, 2008, and a Statement of Charges, dated September 30, 2008, were served upon the Respondent, **Vishwamintra Persaud, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Alexander M. Yvars, M.D.**, Chairperson, **James R. Dickson, M.D.**, and **Ms. Robin B. Frank**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Michael Bass, Esq.**, of Counsel. The Respondent appeared in person and was represented by Kalison, McBride, Jackson & Murphy, **John Zen Jackson, 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 Commissioner's Order and 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:

David J Gavurin, LCSW-R



Vishwamintra Persaud, 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. Vishwamintra Persaud, M.D., the Respondent, was authorized to practice medicine in New York State on August 14, 1997, by the issuance of license number 207867 by the New York State Education Department (Petitioner's Ex. 4).

2. On April 18, 2008, in the County Court of the State of New York, Nassau County, Mineola, New York, the Respondent was found guilty, based on a plea of guilty, of attempted course of sexual conduct against a child in the second degree, in violation of New York Penal Law Sections 110 and 130.80(1)(b), a class E felony. On June 11, 2008, the Respondent was sentenced to an eight-year order of protection, ten years probation, a \$2,500.00 fine and various fees and surcharges. (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

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

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted of attempted course of sexual conduct against a child in the second degree, which is a class E felony. [REDACTED]

[REDACTED] The Respondent admitted that he committed the crime, but argued that he should not lose his license to practice medicine because of the exceptional quality of his medical practice and because therapy has transformed him into a person who will never commit a similar act. For such an argument to have any chance for success, the evidence must demonstrate that the Respondent will not commit a similar act in the future. The Respondent's evidence does not lead to this conclusion.

The Respondent on a number of occasions touched the vaginal area of [REDACTED] over her underwear. On one occasion he touched her vulva underneath her

underwear. The Respondent relied on the testimony of Mr. Gavurin, who had been providing therapy to the Respondent since February of 2008 to prove that the Respondent had learned how to deal constructively with his emotions, pressures and frustrations, and, consequently, would never commit an act of sexual abuse again. There are too many problems with Mr. Gavurin's testimony to consider it reliable. One of the strongest reasons he gave for his opinion was that the abuse took place over a short period of time, nine to twelve months. The first problem with this argument is that nine to twelve months is not a short period of time when the subject under consideration is the sexual abuse of a child. Also, the claim that the abuse lasted nine to twelve months is factually incorrect. The Respondent testified that the abuse began approximately in 2003 and did not end until October 2007. Furthermore, the only reason that the abuse ended in October 2007 is that [REDACTED] finally told [REDACTED] about the abuse. The Respondent deserves no credit for bringing the abuse to an end.

Mr. Gavurin also did not know how frequently the abuse occurred. He said that it occurred three to five times. The Respondent testified that it occurred six to eight times. Mr. Gavurin was unconcerned that he had not learned from the Respondent the details and the scope of the problem.

Mr. Gavurin based his opinion on an inaccurate understanding of how long the problem had persisted and the number of times that it had manifested itself. He also was unconcerned that the abuse ended only because [REDACTED] finally told [REDACTED] what had happened.

Another problem with Mr. Gavurin's testimony is his statement that the Respondent has an illness that is not yet cured, but will be. If the illness that led to the sexual abuse is not yet cured, how can it be concluded that it will not cause additional acts of abuse?

Mr. Gavurin expressed certainty not only that the Respondent would not repeat his acts of sexual abuse, but that he would never commit any type of antisocial act or criminal act. This remarkably global assurance casts further doubt on Mr. Gavurin's credibility. His opinion is not accepted by this Hearing Committee.

The Respondent made another argument for the purpose of assuring the Hearing Committee that he was not a sexual threat to his patients. He noted that [REDACTED] was a child and that all his patients were adults. Also, his sexual abuse occurred [REDACTED] not at work. Therefore, the Respondent urged a conclusion that if the Respondent was a threat, the threat was limited to [REDACTED]. This argument is rejected. It cannot be known with any degree of certainty that the Respondent's illness will always manifest itself in the same way. The fact that the first victim was [REDACTED] is far from a guarantee that no adult patient at work is at risk.

The Respondent noted that when the Court sentenced the Respondent, it labeled him a Level 1 sex offender, which is the lowest level. This level is for those sex offenders least likely to repeat their misconduct. However, this is far from a guarantee of safety. The Court chose Level 1 when the Respondent was still in the beginning stage of therapy. Nobody at that point had enough information on which to base a reliable opinion about recidivism.

Three of the Respondent's patients testified about the Respondent with effusive praise. The Respondent also introduced into evidence numerous letters from patients and physicians attesting to the high quality of medical care provided by the Respondent and to his dedication to his patients. Some of these letters are impressive, while others obviously are based on a template that the Respondent admitted he provided to patients. For instance, 20 letters state that the patient would wait for two hours or a long time "just

to see him" (Respondent Ex. 9, 10, 12, 14, 15, 16, 17, 18, 20, 23, 24, 25, 34, 35, 36, 37, 38, 42, 43 and 46).

Regardless of how much evidence the Respondent has marshaled about the quality of his medical practice, the Hearing Committee cannot allow him to practice medicine when the evidence about sexual abuse recidivism is so unimpressive. No matter how skilled a physician he is, his sexual crime makes him an unacceptable risk to the people of New York State. His license must be revoked.

The Respondent is entitled to apply for reinstatement of his license three years after the effective date of this Determination and Order. At that point, he may be able to prove that which he did not prove in this hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine 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).

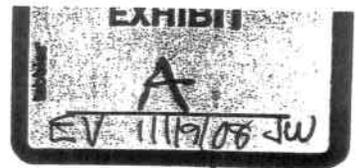
DATED: Mayfield, New York
11-2-08, 2008

Redacted Signature

~~_____~~
Alexander M. Yvars, M.D.
Chairperson

James R. Dickson, M.D.
Robin B. Frank

APPENDIX I



IN THE MATTER
OF
VISHWAMINTRA PERSAUD, M.D.
CO-08-05-2986-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: VISHWAMINTRA PERSAUD, M.D.
Redacted Address

VISHWAMINTRA PERSAUD, M.D.
308 A East 15th Street
New York, NY 10003

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 **VISHWAMINTRA PERSAUD, M.D.**, Respondent, licensed to practice medicine in the State of New York on August 14, 1997, by license number 207867, has pleaded or been found guilty or convicted of committing an act constituting a felony under New York state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted 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 **VISHWAMINTRA PERSAUD, 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 THE STATE OF NEW YORK 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 19th day of November 2008, 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, which 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. JAMES 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. This 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
9/29/2008

Redacted Signature


RICHARD F. DAINES, M.D.
Commissioner of Health
New York State Department 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

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

IN THE MATTER
OF
VISHWAMINTRA PERSAUD, M.D.
CO-08-05-2986-A

STATEMENT
OF
CHARGES

VISHWAMINTRA PERSAUD, M.D., Respondent, was authorized to practice medicine in New York state on August 14, 1997, by the issuance of license number 207867 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 18, 2008, in the County Court of the State of New York, Nassau County, Mineola, New York, Respondent was found guilty, based on a plea of guilty, of attempted course of sexual conduct against a child in the second degree, in violation of New York Penal Law, §§110 and 130.80(1)(b), a class E felony, and on or about June 11, 2008, was sentenced to an eight (8) year order of protection, ten (10) years probation, a \$2,500.00 fine, a \$20.00 CVAF, a \$50.00 DNA and a \$250.00 surcharge.

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 A.

DATED: *Sept. 30*, 2008
Albany, New York

Redacted Signature

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