



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

*Public*

January 24, 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Gloria Chioumga Achara, M.D.  
417 5<sup>th</sup> Street  
Brooklyn, New York 11215

Francis D. Ruddy, Esq.  
NYS Department of Health  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Gloria Chioumga Achara, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-15) 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), 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.

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.

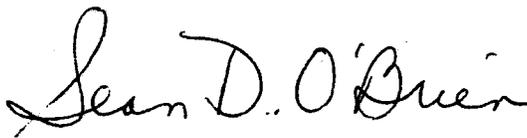
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah

Enclosure

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

**IN THE MATTER  
OF  
GLORIA CHIOUMGA ACHARA, M.D.**

**DETERMINATION**

**AND**

**ORDER**

BPMC #07-15

**COPY**

**PASCAL JAMES IMPERATO, M.D.**, Chairperson, **RAFAEL LOPEZ, M.D.**, and **MS. LOIS VOYTICKY**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law ["PHL"]. **DENNIS T. BERNSTEIN, ESQ., ADMINISTRATIVE LAW JUDGE**, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

**STATEMENT OF CHARGES**

The Statement of Charges charges the Respondent with professional misconduct by failing to comply with an Order issued by a Committee on Professional Conduct of the State Board for Professional Medical Conduct pursuant to PHL §230(7) (one specification).

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix I.

**SUMMARY OF PROCEEDINGS**

Notice of Hearing and Statement of Charges Dated:	July 28, 2006
Date of Service of Notice of Hearing and Statement of Charges:	August 11, 2006 <sup>1</sup>
Answer to Charges Dated:	Not Applicable <sup>2</sup>
Prehearing Conference Date:	September 13, 2006
Hearing Date:	September 28, 2006
Deliberation Date:	November 3, 2006
Place of Hearing:	NYS Department of Health 90 Church Street, 4 <sup>th</sup> Floor New York, New York
Petitioner Appeared By:	Francis D. Ruddy, Esq. Assistant Counsel NYS Department of Health, Bureau of Professional Medical Conduct
Respondent Appeared By:	Not Applicable <sup>3</sup>

**WITNESSES**

For the Petitioner:	None <sup>4</sup>
For the Respondent:	None <sup>5</sup>

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<sup>1</sup> The Petitioner, having exercised due diligence in its attempts to personally serve the notice and charges upon the Respondent, served the notice and charges upon the Respondent by certified mail to the Respondent's last known address pursuant to PHL §230(10)(d).

<sup>2</sup> The Respondent failed to file a written Answer.

<sup>3</sup> The Respondent failed to appear and the hearing proceeded in her absence.

<sup>4</sup> The Petitioner's case consisted solely of documentary evidence.

<sup>5</sup> The Respondent defaulted. (See note 3, *supra*).

## **FINDINGS OF FACT**

Numbers preceded by "Tr." in parenthesis refer to hearing transcript page numbers. Numbers preceded by "Ex." in parenthesis refer to specific exhibits. These citations denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

### **GENERAL FINDING AS TO THE RESPONDENT**

#### **Licensure**

1. Gloria Chiounga Achara, M.D. ["the Respondent"], was authorized to practice medicine in New York State on July 2, 1992 by the issuance of license number 189645 by the New York State Education Department (Ex. 2, p. 4).

#### **Last Known Address**

2. The Respondent is required to renew her medical license registration every two years with the NYS Education Department and list her current address and, if applicable, any address change.
3. The Respondent's most recent Registration Renewal Document filed with the NYS Education Department for the period 11/1/05-10/31/07 is dated 6/17/05 and lists 417 5<sup>th</sup> Street, Brooklyn, NY 11215, as the Respondent's address and contains the handwritten notation "N/A" in the section of the form entitled "Name/address change" (Ex. 2, pp. 2-3).

4. In addition, the Respondent is required by Education Law §6502(5) to notify the NYS Education Department of any change of mailing address within 30 days of such change (Tr. 55 and 59).
5. There is no written notice from the Respondent of any change of mailing address in the Respondent's medical license registration file maintained by the NYS Education Department (Tr. 56; Ex. 2).
6. The Respondent sent a letter to Leonard Strashinsky, Medical Conduct Investigation, Office of Professional Medical Conduct ["OPMC"], NYSDOH, dated September 21, 2005, which lists 417 5<sup>th</sup> Street, Brooklyn, New York 11215, as the Respondent's return address (Ex. 1A). This letter was, as of September 21, 2006, the Respondent's most recent correspondence to OPMC (Ex. 1, ¶ 2). Furthermore, the Respondent stated in this letter that she had been dismissed from her job effective June 30, 2005 and that she was "physically and emotionally in capable of participating in the investigative proceedings" (Ex. 1A).
7. On several occasions, letters and other documents relating to this matter were sent to the Respondent by the Bureau of Professional Medical Conduct ["BPMC"]. These items were sent to the Respondent at 417 5<sup>th</sup> Street, Brooklyn, New York 11215. Various methods of delivery were used, including certified mail and priority mail with delivery confirmation. Although the items sent by certified mail were ultimately "returned to sender", the items sent by priority mail were delivered. More specifically, the items sent by priority mail were delivered on April 12, 2006 (Ex. 1B, p. 5), May 9, 2006 (Ex. 1C, p. 3) and August 12, 2006 (Ex. 1F, p. 6). (Ex.1, ¶¶ 3A-C and Ex. 1B; Ex. 1, ¶¶ 4A, C, D and E and Ex. 1C; Ex. 1, ¶¶ 5 and 6B-E and Ex. 1F).

8. The Respondent's last known address is 417 5<sup>th</sup> Street, Brooklyn, New York 11215. (See findings 2 through 7, *supra*; See also Ex. 1, ¶ 7 and Ex. 1G, and ¶ 8 and Ex. 1H).

### **SPECIFIC FINDINGS AS TO THE MISCONDUCT CHARGE**

#### **PHL §230(7) Proceeding**

9. David W. Smith, Associate Counsel, BPMC, sent a letter to the Respondent dated April 10, 2006, advising her, among other things, that: 1) OPMC has information which indicates that she may be impaired by alcohol, drugs, physical disability or mental disability; 2) Pursuant to PHL §230(7), a Committee on Professional Conduct will meet at a proceeding to be held on May 4, 2006, to review this information and to determine whether it has reason to believe that she may be so impaired, and whether to direct her to submit to a medical and/or psychiatric examination; 3) She can attend the proceeding, she may be accompanied by an attorney if she chooses to retain one, and she will be given an opportunity to be heard by the Committee; and 4) The issues under review are acute paranoia and non-compliance with Committee on Physicians Health. (Ex. 1B).
10. On April 11, 2006, this letter was sent to the Respondent at 417 5<sup>th</sup> Street, Brooklyn, New York 11215, by certified mail and by priority mail with delivery confirmation. While the letter sent by certified mail was subsequently returned by the United States Postal Service ["USPS"] and stamped "Return to Sender-Unclaimed-Unable to Forward", the letter sent by priority mail was delivered on April 12, 2006. (Ex. 1B).

11. The Respondent was provided with sufficient notice of the PHL §230(7) Proceeding and was afforded an ample opportunity to be heard by the Committee (Tr. 51-52; See findings 8 through 10, *supra*).
12. On May 4, 2006 a proceeding was held before a Committee on Professional Conduct of the State Board for Professional Medical Conduct ["the Committee"] pursuant to PHL §230(7). After reviewing the information presented by OPMC, the Committee: 1) Found reason to believe that the Respondent may be impaired by mental illness; and 2) Issued a written Order dated May 4, 2006 ["the PHL §230(7) Order"] requiring the Respondent a) to submit to a medical and psychiatric examination to be conducted by Arnold Merriam, M.D., and b) to schedule the examination with Dr. Merriam, which must be commenced no later than May 18, 2006 (14 days from the effective date of the May 4<sup>th</sup> Order). (Ex. 1D).

#### **Service of the PHL §230(7) Order**

13. A copy of the PHL §230(7) Order along with a cover letter from David W. Smith, Associate Counsel, BPMC, dated May 8, 2006, were sent by Mr. Smith to a process server for personal service upon the Respondent at 417 5<sup>th</sup> Street, Brooklyn, New York 11215 (Ex. 1, ¶ 4A). From May 8, 2006 through May 9, 2006, the process server made four separate attempts to personally serve the Respondent at the specified location over a 27 hour period, all of which were unsuccessful (Ex. 1C, p. 2).
14. A copy of the PHL §230(7) Order along with a copy of Mr. Smith's May 8<sup>th</sup> cover letter were also sent to the Respondent at 417 5<sup>th</sup> Street, Brooklyn, New York 11215, by priority mail with delivery confirmation on May 8, 2006 and by certified mail on May 11, 2006 (Ex. 1, ¶ 4C). While the letter sent by certified mail was subsequently returned by

USPS and stamped "Return to Sender-No Such Number-Unable to Forward", the letter sent by priority mail was delivered on May 9, 2006 (Ex. 1C).

15. Furthermore, on May 8, 2006 copies of the PHL §230(7) Order and Mr. Smith's May 8<sup>th</sup> cover letter were sent to the Respondent at 417 5<sup>th</sup> Street, Brooklyn, NY 11215, by Federal Express overnight delivery, and were delivered on May 9, 2006. However, a signature acknowledging delivery was not obtained. (Ex. 1, ¶ 4F and Ex. 1C, pp. 6 and 7).
16. The Respondent was provided with sufficient notice of the PHL §230(7) Order and the requirements contained therein (Tr. 52-53; See findings 12 through 15, *supra*).

#### **Failure to Comply with the PHL §230(7) Order**

17. The PHL §230(7) Order specifically required the Respondent a) to submit to a medical and psychiatric examination to be conducted by Arnold Merriam, M.D., and b) to schedule the examination with Dr. Merriam, which must be commenced no later than May 18, 2006 (14 days from the effective date of the May 4<sup>th</sup> Order). (See finding 12, *supra*).
18. The Respondent failed to contact Dr. Merriam to schedule the medical and psychiatric examination required by the PHL §230(7) Order. More specifically, as of August 4, 2006 neither the Respondent nor anyone acting on her behalf contacted Dr. Merriam, either directly or indirectly, by any means whatsoever, in order to schedule the required medical and psychiatric examination. (Ex. 3).
19. Furthermore, as of August 4, 2006 the Respondent had never presented herself to Dr. Merriam for the medical and psychiatric examination required by the PHL §230(7) Order (Ex. 3).

20. Finally, the Respondent's failure to contact Dr. Merriam to schedule the required medical and psychiatric examination and/or her failure to present herself to Dr. Merriam for such medical and psychiatric examination, constitutes a direct violation of the PHL §230(7) Order issued by the Committee.

### **CONCLUSIONS OF LAW**

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless otherwise specified.

The Respondent did fail to comply with an Order issued by a Committee on Professional Conduct of the State Board for Professional Medical Conduct pursuant to PHL §230(7). The Petitioner has proved by a preponderance of the evidence that the Respondent did not comply with the Order issued on May 4, 2006 by a Committee on Professional Conduct of the State Board for Professional Medical Conduct pursuant to PHL §230(7), requiring the Respondent to submit to a medical and psychiatric examination to be conducted by Arnold Merriam, M.D., and to schedule the examination with Dr. Merriam, which must be commenced no later than 14 days from the effective date of the Order.

### **SIGNIFICANT LEGAL DECISIONS RENDERED DURING THE HEARING**

During the hearing, following the completion of the Petitioner's entire case, the Administrative Law Judge ("the ALJ") rendered several legal decisions addressing significant legal issues raised during the hearing.

### **Service and Jurisdiction Issue**

The first significant legal issue addressed by the ALJ concerned the service of the Notice of Hearing and Statement of Charges upon the Respondent at 417 5<sup>th</sup> Street, Brooklyn, New York 11215, by certified mail, return receipt requested (Tr. 48-51). In rendering his decision, the ALJ made the following findings of fact:

1. 417 5<sup>th</sup> Street, Brooklyn, New York 11215, is the Respondent's last known address (Exs. 1 and 2).
2. 417 5<sup>th</sup> Street, Brooklyn, New York 11215, is not only the Respondent's last known address, but it is the only known address for contacting the Respondent (Exs. 1 and 2).
3. The Petitioner attempted to personally serve the Respondent with a copy of the Notice of Hearing and Statement of Charges at 417 5<sup>th</sup> Street, Brooklyn, New York, on three separate occasions (Ex.1, ¶ 6A and Ex.1F, p. 1).
4. More specifically, the Petitioner's attempts of personal service were made on three consecutive days at different times of the day and all attempts were unsuccessful (Ex.1F, p. 1).
5. After the Petitioner's three attempts of personal service proved to be unsuccessful, the Petitioner mailed a copy of the Notice of Hearing and Statement of Charges to the Respondent at 417 5<sup>th</sup> Street, Brooklyn, New York 11215, by both certified mail, return receipt requested, and by priority mail with delivery confirmation (Ex.1, ¶¶ 6B and 6C, and Ex.1F, pp. 2 and 3).

Based upon the above findings of fact, the ALJ ruled as follows:

1. The Petitioner exercised due diligence in its attempts to personally serve the Notice of Hearing and Statement of Charges upon the Respondent.

2. The Petitioner, having exercised due diligence in its unsuccessful attempts to serve the Respondent personally, was authorized by PHL §230(10)(d) to serve the Respondent at her last known address by certified mail.
3. The service of the Notice of Hearing and Statement of Charges upon the Respondent at 417 5<sup>th</sup> Street, Brooklyn, New York 11215, by certified mail, complied with the service requirements set forth in PHL §230(10)(d).
4. Therefore, the service of the Notice of Hearing and Statement of Charges upon the Respondent was valid and the Hearing Committee in this matter has personal jurisdiction over the Respondent.

The ALJ also ruled that even though there is no specific evidence that the Respondent actually received the Notice of Hearing and Statement of Charges, the Petitioner still satisfied the service requirements specified in PHL §230(10)(d). The ALJ concluded that the Petitioner properly served the Respondent in accordance with the statute, which requires personal service unless “personal service cannot be made after due diligence”, and in such event the statute authorizes service “by registered or certified mail to the licensee’s last known address”.

Finally, it should be noted that the ALJ addressed the issue concerning the Respondent’s failure to appear at the hearing, which is related to the service and jurisdiction issue discussed above and directly affected by its outcome. However, this issue, unlike the other issues appearing in this section, was addressed by the ALJ at the outset of the hearing. At that time the ALJ ruled that as long as the Notice of Hearing and Statement of Charges were properly

served and personal jurisdiction was obtained over the Respondent, the hearing could proceed in the Respondent's absence. In fact, the Notice of Hearing specifically advised the Respondent that "The hearing will proceed whether or not you appear at the hearing." (Ex. 1E, p. 1).

#### **Notice of the PHL §230(7) Proceeding and Opportunity to be Heard**

The next significant legal issue addressed by the ALJ concerned the prior notice of the PHL §230(7) Proceeding provided to the Respondent and her opportunity to be heard at the proceeding (Tr. 51-52). In deciding this issue the ALJ found that the Respondent was provided with prior written notice of the PHL §230(7) proceeding to be held on May 4, 2006 to determine whether to direct the Respondent to submit to a medical and/or psychiatric examination and, which, in addition, advised the Respondent of her right to be heard in connection with the aforesaid proceeding (Ex. 1B). The ALJ then ruled as follows:

1. The Respondent was provided with sufficient prior notice of the PHL §230(7) Proceeding to be held on May 4, 2006 to determine whether to direct the Respondent to submit to a medical and/or psychiatric examination.
2. The Respondent was afforded ample opportunity to be heard in connection with the PHL §230(7) Proceeding.
3. The notice of the PHL §230(7) Proceeding provided to the Respondent and the opportunity to be heard at such proceeding afforded to the Respondent were in full compliance with the requirements set forth in PHL §230(7) and fully satisfied the requirements of due process.

### **Notice of the PHL §230(7) Order**

The final significant legal issue addressed by the ALJ during the hearing concerned the notice that had been provided to the Respondent regarding the PHL §230(7) Order (Tr. 52-53). In deciding this issue the ALJ found that the Respondent was provided with written notice of the PHL §230(7) Order issued on May 4, 2006 directing the Respondent to submit to a medical and psychiatric examination to be conducted by Arnold Merriam, M.D., and to be commenced no later than 14 days from the effective date of the Order, along with a copy of the actual Order itself (Exs. C and D). The ALJ then ruled that the Respondent was provided with sufficient notice of the PHL §230(7) Order and was adequately apprised of the requirements of the aforesaid Order.

### **DISCUSSION**

In reaching its findings and its conclusions derived therefrom, the Hearing Committee conducted an extensive review of the documents admitted into evidence, which was the only evidence presented to the Hearing Committee during the hearing.

Since the Petitioner's case consisted solely of documentary evidence and the Respondent defaulted, the Hearing Committee did not have to evaluate testimonial evidence. However, the Hearing Committee did conduct a thorough evaluation of each of the exhibits admitted into evidence.

The Hearing Committee found that the Petitioner exercised due diligence in its efforts to contact the Respondent with respect to: 1) Prior notice of the PHL §230(7) Proceeding that was to be held on May 4, 2006; 2) Service of the PHL §230(7) Order and cover letter dated May 8, 2006; and 3) Service of the Notice of Hearing and Statement of Charges. The Hearing Committee believes that these efforts were more than reasonable in view of the information that was available to the Petitioner.

Having found that the Respondent was provided with sufficient notice of both the PHL §230(7) Proceeding and the PHL §230(7) Order, the Hearing Committee then found that the Respondent failed to comply with the requirements set forth in the PHL §230(7) Order. More specifically, the PHL §230(7) Order clearly required the Respondent to submit to a medical and psychiatric examination to be conducted by Dr. Merriam. The Respondent did not fulfill this requirement. In addition, the PHL §230(7) Order clearly required the Respondent to schedule the examination with Dr. Merriam and it clearly stated that the examination must be commenced no later than 14 days from its effective date. The Respondent did not fulfill this requirement either. (Ex. 1D).

Finally, the Hearing Committee noticed a similarity between the Respondent's failure to submit to a medical and psychiatric examination and her failure to participate in the instant proceeding. A pattern emerged demonstrating an inability to deal with stressful situations. This pattern is further supported by the Respondent's final comments that appear in her letter to Leonard Strashinsky, Medical Conduct Investigation, OPMC, dated September 21, 2005 (See finding 6, *supra*). The Respondent stated in this letter that "It increasingly appears unlikely that I will receive an impartial review into this matter and I sadly feel resigned to a pre-determined decision by the Board. I am presently physically and emotionally in capable of

participating in the investigative proceedings.” (Ex. 1A). In view of these comments, it is not surprising that the Respondent failed to submit to a medical and psychiatric examination and also failed to participate in the instant proceeding.

### **VOTE OF THE HEARING COMMITTEE**

**(All votes were unanimous unless otherwise specified)**

#### **Factual Allegations**

A	Sustained
A1	Sustained

#### **Specification of Charges**

##### **Failure to Comply with an Order**

1<sup>st</sup> Specification

Sustained

Sustained Factual Allegations in Support of the 1<sup>st</sup> Specification: A and A1

### **SIGNIFICANT LEGAL DECISION RENDERED DURING THE DELIBERATIONS**

During the deliberations of the Hearing Committee, following the vote of the Hearing Committee, but before the determination of a penalty, the ALJ rendered a legal decision addressing a significant legal issue that was still pending.

### **Failure to File an Answer**

While the issue relating to the Respondent's failure to file a written Answer was initially raised at the outset of the hearing, it was held in abeyance until the Hearing Committee reached a determination as to the misconduct charge. Immediately after the Hearing Committee voted to sustain the factual allegations and the single specification charging Failure to Comply with an Order, the ALJ rendered a decision on this pending issue.

Although the ALJ found that the Respondent's failure to file a written Answer as required by PHL §230(10)(c)(2) is deemed an admission by the Respondent of each of the factual allegations and the single specification of misconduct appearing in the Statement of Charges, the ALJ deferred his findings to those of the Hearing Committee.

The complete findings of fact, conclusions of law, and decision rendered by the ALJ addressing this issue are set forth in his written Decision dated January 12, 2007, a copy of which is attached to this Determination and Order as Appendix II.

### **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that the Respondent's license to practice medicine in the State of New York should be revoked.

This determination was reached after due and careful consideration of the full spectrum of penalties available pursuant to PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Hearing Committee's selection of a specific penalty was made after a thorough evaluation of the underlying acts of misconduct and the question of whether the public is placed at risk by the Respondent.

The Hearing Committee firmly believes that the Respondent's failure to comply with the PHL §230(7) Order represents a wanton disregard of the laws which govern the professional conduct of physicians who practice medicine in New York State. Furthermore, this behavior not only constitutes a violation of both the NYS PHL and Education Law, but it is a significant departure from accepted standards of behavior for New York physicians.

In addition, the Hearing Committee has a genuine concern that the Respondent may be impaired by mental illness which compromises her ability to practice medicine. A psychiatric examination would be invaluable in addressing this concern. Unfortunately, the Respondent has refused to undergo a psychiatric examination. Consequently, due to the actions of the Respondent, the Hearing Committee has no way of definitively knowing whether or not the Respondent is impaired by mental illness.

The Hearing Committee recognizes that its primary responsibility is to protect the public. Given this responsibility, and given the Respondent's failure to obey the PHL §230(7) Order, failure to undergo the ordered psychiatric examination, and failure to participate in the instant proceeding, the Hearing Committee is compelled to presume that the Respondent is impaired by mental illness.

The Hearing Committee finds that the Respondent's failure to obey the PHL §230(7) Order requiring her to submit to a medical and psychiatric examination, provides an ample basis to impose discipline against her. Inasmuch as the Respondent did not appear at the hearing, file an answer, or present any evidence on her own behalf, there is no reason to consider mitigation of the sanction to be imposed.

The Hearing Committee unanimously concluded that the Respondent's conduct was unacceptable and that the Respondent's continued practice of medicine creates a substantial risk to public safety. In view of the totality of the circumstances, the Hearing Committee finds that the only appropriate and acceptable penalty is revocation.

**ORDER**

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The 1<sup>st</sup> Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I), is **SUSTAINED**; and
2. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED**; and
3. This **ORDER** shall be effective upon service on the Respondent which shall be either by certified mail at the Respondent's last known address (to be effective upon receipt or seven days after mailing, whichever is earlier) or by personal service (to be effective upon receipt).

**Dated: New York, New York**  
**January 22, 2007**

  
**PASCAL JAMES IMPERATO, M.D.**  
**Chairperson**

**RAFAEL LOPEZ, M.D.**  
**LOIS VOYTICKY**

**TO: GLORIA CHIOUMGA ACHARA, M.D.**  
417 5<sup>th</sup> Street  
Brooklyn, NY 11215

**FRANCIS D. RUDDY, ESQ.**  
Assistant Counsel  
Bureau of Professional Medical Conduct  
90 Church Street, 4<sup>th</sup> Floor  
New York, NY 10007

APPENDIX I

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

IN THE MATTER  
OF  
GLORIA CHIOUMGA ACHARA, M.D.

STATEMENT  
OF  
CHARGES

GLORIA CHIOUMGA ACHARA, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 2, 1992, by the issuance of license number 189645 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On May 4, 2006, a committee on professional conduct, after affording Respondent an opportunity to be heard before it, which Respondent failed to do, and after reviewing information presented by the Office of Professional Medical Conduct, found reason to believe that Respondent may be impaired by mental illness. In an order issued May 4, 2006, pursuant to N.Y. Public Health Law Section 230(7), the committee directed Respondent to submit to and cooperate with a medical and psychiatric examination by a physician designated in said order, such examination to be commenced no later than May 18, 2006. This order was duly served on Respondent.
1. To date, Respondent has failed to submit to the examination that was ordered.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**FAILURE TO COMPLY WITH AN ORDER**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(15) by failing to comply with an order issued pursuant to subdivision seven of section two hundred thirty of the Public Health Law, as alleged in the facts of:

2. Paragraphs A and A1.

DATED: July 28, 2006  
New York City, New York



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Roy Nemerson  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

**APPENDIX II**

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

**IN THE MATTER  
OF  
GLORIA CHIOUMGA ACHARA, M.D.**

**DECISION**

**DENNIS T. BERNSTEIN, ALJ:**

In response to the Petitioner's motion that each of the factual allegations and the single specification of misconduct appearing in the Statement of Charges be deemed admitted by the Respondent pursuant to §230(10)(c)(2) of the Public Health Law ["PHL"] as a result of the Respondent's failure to file a written answer in accordance with the requirements of the aforesaid statute, I hereby make the following findings of fact and reach the following conclusions of law:

**Findings of Fact<sup>1</sup>**

1. On August 11, 2006, the Petitioner served the Notice of Hearing and Statement of Charges (Ex. 1, ¶ 5 and Ex. 1E) on the Respondent by both certified mail, return receipt requested, and by priority mail with delivery confirmation (Ex.1, ¶¶ 6B and 6C, and Ex.1F, pp. 2 and 3).
2. PHL §230(10)(c)(2) expressly states that "the licensee 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, that any charge and allegation not so answered shall be deemed admitted and

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<sup>1</sup> Numbers preceded by "Ex." in parenthesis refer to specific exhibits that were admitted into evidence during the hearing. Numbers preceded by "Tr." in parenthesis refer to hearing transcript page numbers.

that the licensee may wish to seek the advice of counsel prior to filing such answer". (Tr. 17-18 and 59-60).

3. In addition, the Notice of Hearing ["the Notice"] annexed to the Statement of Charges, which were both served upon the Respondent, advised the Respondent of the requirement to file a written answer and of the consequences of failing to do so. The Notice further advised the Respondent that the answer must be filed with the NYS Department of Health, Bureau of Adjudication, at the address listed in the Notice, and that a copy of the answer must be forwarded to the attorney for the Department of Health whose name is listed in the Notice. (Ex. 1E, pp. 1-3).
4. The Respondent failed to file a written answer with the NYS Department of Health, Bureau of Adjudication, and the Respondent failed to forward a copy of a written answer to either Roy Nemerson or Francis Ruddy, who are the Department of Health attorneys whose names are listed in the Notice. (Tr. 16-17; Ex. 1E, pp. 1-3).

#### **Conclusions of Law**

1. The Respondent's failure to file a written answer as required by PHL §230(10)(c)(2) is deemed an admission by the Respondent of each of the factual allegations and the single specification of misconduct appearing in the Statement of Charges. See *Matter of Corsello v. New York State Department of Health*, 300 A.D.2d 849, 752 N.Y.S.2d 156 (3<sup>rd</sup> Dept. 2002).
2. Therefore, Factual Allegations A and A1 and the First Specification charging Failure to Comply with an Order, appearing in the Statement of Charges, are deemed admitted by the Respondent. (Ex. 1E, pp. 5-6).
3. Consequently, the only remaining issue for the Hearing Committee to determine is the

issue of penalty.

### **Decision**

However, inasmuch as the Hearing Committee has already completed its deliberations regarding the misconduct charge and rendered a verdict sustaining Factual Allegations A and A1 and the First Specification charging Failure to Comply with an Order, there is no need for me to decide the instant motion. The Hearing Committee's verdict makes the instant motion moot.

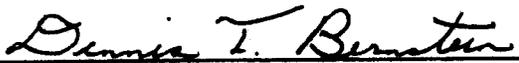
It is important to note that the Hearing Committee's findings, conclusions and ultimate vote resulted from a determination on the merits. My findings, conclusions and decision, as Administrative Law Judge, appearing herein, are legal determinations resulting from the Respondent's failure to comply with a statutory requirement. While the Hearing Committee and I, as Administrative Law Judge, traveled different roads, the destination was the same – the sustaining of all factual allegations and the single specification charged. Furthermore, without minimizing the importance of the statute in question, I believe that a determination on the merits is preferable to a determination based upon a violation of a statutory requirement.

Therefore, I hereby defer my determination, as Administrative Law Judge, to that of the Hearing Committee. Nevertheless, in the unlikely event that the Hearing Committee's findings of fact, conclusions of law and/or vote with respect to the factual allegations and single specification charged, are ever reversed, nullified or modified, I hereby rule that, as a matter of law, the Respondent's failure to file a written answer as required by PHL §230(10)(c)(2) is deemed an admission by the Respondent of each of the factual allegations and the single specification of misconduct appearing in the Statement of Charges.

The foregoing constitutes my Decision.

A copy of this Decision shall be appended to the Hearing Committee's Determination and Order, marked as "Appendix II", and service of this Decision upon the parties shall be effectuated with the service of the Hearing Committee's Determination and Order.

**Dated: New York, New York  
January 12, 2007**

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**DENNIS T. BERNSTEIN**  
**Administrative Law Judge**

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