

DOH 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

October 19, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Gerardo Asdrubal Yanayaco, M.D.
REDACTED

RE: In the Matter of Gerardo Asdrubal Yanayaco, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-192) 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

-----X
IN THE MATTER :
OF :
GERARDO ASDRUBAL YANAYACO, M.D. :
CO-07-11-6621-A :
-----X

DETERMINATION

AND

ORDER

BPMC #10-192

COPY

A Commissioner's Order and Notice of Referral Proceeding and a Statement of Charges, both dated September 30, 2008, were served upon the Respondent, Gerardo Asdrubal Yanayaco, M.D. C. DEBORAH CROSS, M.D. (Chair), THERESE G. LYNCH, M.D., and PAUL J. LAMBIASE, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Jude B. Mulvey, Esq., Associate Counsel. The Respondent failed to appear, either in person or by counsel. A hearing was held on September 22, 2010. Evidence was received and witnesses sworn and heard 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 where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i), in that he was convicted of an act constituting a crime under New York State Law. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

The Department was unsuccessful in its attempt to personally serve Respondent with the pleadings in this case (Exhibit #2). However, the Department did achieve substituted service by mailing the documents by certified mail to Respondent's last known address. (Exhibits #3, 6). Moreover, the Administrative Law Judge was in direct contact with Respondent by e-mail. The Judge established that Respondent was aware of the proceedings, but chose not to appear, as he had

relocated to Peru. Accordingly, the Judge ruled that the Board had obtained jurisdiction over the Respondent, and the case proceeded in his absence.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Gerardo Asdrubal Yanayaco, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on May 4, 1999 by the issuance of license number 213859 by the New York State Education Department. (Ex. #4).
2. On or about November 9, 2007, in the Supreme Court of the State of New York, New York County, New York, Respondent was convicted of insurance fraud in the third degree, in violation of New York Penal Law §176.20, a class D felony; grand larceny in the third degree, in violation of New York State Penal Law §155.35, a class D felony; offering a false instrument for filing in the first degree, in violation of New York State Penal Law §175.35, a class E felony; falsifying a business record in the first degree, in violation of New York State Penal Law §175.10, a

class E felony; and scheme to defraud, in the first degree, in violation of New York State Penal Law §190.65(1), a class E felony. (Exhibit #5).

3. On or about February 11, 2008, Respondent was sentenced to the (10) months imprisonment on each count, a \$20.00 CVAF, and a \$250.00 surcharge. (Exhibit #5).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence clearly established that Respondent was convicted, following a trial, of multiple felonies involving insurance fraud in the practice of medicine. Accordingly, he is guilty of professional misconduct in violation of New York Education Law §6530(9)(a)(i). Therefore, the Specification of professional misconduct set forth in the Statement of Charges is sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. In addition, the Committee determined to impose a fine in the amount of \$10,000.00. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent was convicted of multiple felonies arising out of insurance fraud committed in the conduct of his medical practice. This fundamental betrayal of the public trust mandates revocation of his medical license. In addition, since his crimes were financial in nature, it is appropriate that the maximum allowable fine be imposed as well. Respondent failed to appear at the hearing to present any evidence which might mitigate the sanction to be imposed. Indeed, Respondent has left the United States, returning to his native Peru. Thus, it is clear that he has abandoned any right to retain his license to practice medicine in the State of New York.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;
2. Respondent's license to practice medicine in New York State be and hereby is REVOKED;
3. A fine in the amount of TEN THOUSAND DOLLARS (\$10,000.00) be and hereby is imposed upon Respondent;
4. Payment of the aforesaid sum shall be made to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1717, Empire State Plaza, Albany, New York 12237 within thirty (30) days of the effective date of this Order. Any fine not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32);
5. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service

shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Elmsford, New York

October 12, 2010

REDACTED

C. DEBORAH CROSS, M.D. (CHAIR)

THERESE G. LYNCH, M.D.
PAUL J. LAMBIASE

TO: Jude B. Mulvey, Esq.
Associate Counsel
New York State Department of Health
Corning Tower, Room 2512
Albany, New York 12237

Gerardo Asdrubal Yanayaco, M.D.

REDACTED

APPENDIX I

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

IN THE MATTER
OF
GERARDO ASDRUBAL YANAYACO, M.D.
CO-07-11-6621-A

STATEMENT
OF
CHARGES

GERARDO ASDRUBAL YANAYACO, M.D., Respondent, was authorized to practice medicine in New York state on May 4, 1999, by the issuance of license number 213859 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 9, 2007, in the Supreme Court of the State of New York, New York County, New York, Respondent was convicted of insurance fraud in the third degree, in violation of New York Penal Law §176.20, a class D felony; grand larceny in the third degree, in violation of New York State Penal Law §155.35, a class D felony; offering a false instrument for filing in the first degree, in violation of New York State Penal Law §175.35, a class E felony; falsifying a business record in the first degree, in violation of New York State Penal Law §175.10, a class E felony; and scheme to defraud, in the first degree, in violation of New York State Penal Law §190.65(1), a class E felony; and on or about February 11, 2008, was sentenced to ten (10) months imprisonment on each count, a \$20.00 CVAF, 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

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