



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

*Public*

November 1, 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jason Jaramillo, M.D.  
Redacted Address

Jason Jaramillo, M.D.  
Redacted Address

Robert Bogan, Esq.  
NYS Department of Health  
Hedley Building – 4<sup>th</sup> Floor  
433 River Street  
Troy, New York 12180

Michael S. Kelton, Esq.  
Lippman, Krasnow, Kelton & Shuman, LLP  
380 Lexington Avenue  
New York, New York 10168

**RE: In the Matter of Jason Jaramillo, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-238) 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,

Redated 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  
JASON JARAMILLO, M.D.

DETERMINATION  
AND  
ORDER  
BPMC #07-238

A hearing was held on October 17, 2007, 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 July 13, 2007, were served upon the Respondent, **Jason Jaramillo, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Donald Cherr, M.D.**, Chairperson, **Gregory Fried, M.D.**, and **Mr. Robert M. Briber**, 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.**, of Counsel. The Respondent appeared in person and was represented by **Lippman Krasnow Kelton & Schuman, Michael S. Kelton, 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 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:

Rev. Brian Moll  
William Ford, Jr., LCSW  
Jason Jaramillo, 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. Jason Jaramillo, M.D., the Respondent, was authorized to practice medicine in New York State from July 1, 2005, to June 30, 2006, as a resident at the Brooklyn Hospital Center in Brooklyn, New York (Petitioner's Ex. 5).

2. On September 18, 2006, in the Supreme Court of the State of New York, New York County, the Respondent was found guilty, based on a plea of guilty, of Sexual

Abuse in the First Degree, in violation of New York Penal Law Section 130.65, a class D felony, for acts that occurred on October 29, 2005. On October 29, 2005, the Respondent was sentenced to ten years probation, an eight year Order of Protection, registration as a Level One sexual offender and the payment of \$1,330.00 in fees and surcharges. (Petitioner's Ex. 6).

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

#### **SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been 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 Sexual Abuse in the First Degree, a class D felony. The conviction was based on the Respondent having subjected a woman to sexual contact when the woman was incapable of giving her consent because of physical helplessness. The contact was between the Respondent's hand and the woman's vagina.

In a professional medical conduct hearing, the penalties that can be imposed for professional misconduct are found in Public Health Law Section 230-a. The parties disputed which of these penalties could be imposed legally on the Respondent. The Respondent noted that Section 230-a provides that a penalty can be imposed only on "a present or former licensee..." The Respondent argued that since he had never held a license to practice medicine in New York State, Section 230-a did not apply to him. (A physician serving in a residency program in New York State need not obtain a license in order to participate in that residency program.) The Petitioner countered that the definition of "licensee" found in Public Health Law Section 230, the section of law that

authorizes and delineates the scope and the procedures of the professional medical conduct program, defines "licensee" to include a medical resident. This definition is found in subdivision 7 of Section 230. The Respondent argued that this definition is limited by the wording of subdivision 7 to Section 230 only, because the definition begins with the words "In this section..." This argument is unpersuasive. The first sentence of Section 230-a provides:

The penalties which may be imposed by the state board for professional medical conduct on a present or former licensee found guilty of professional misconduct under the definitions and proceedings prescribed in section two hundred thirty of this title... are...

This language demonstrates the intention of the Legislature to make the penalties listed in Section 230-a available for all persons subject to Section 230 proceedings, not just some of them. It is inconceivable that the Legislature intended to make residents subject to the professional misconduct disciplinary process of Section 230, but to exclude those found guilty of professional misconduct from the penalties of Section 230-a. To do so would make the disciplinary process of Section 230 pointless in the case of residents. The Legislature, in using the term "licensee" in Section 230-a, must have intended the term to have the meaning it has in Section 230. No other conclusion makes any sense.

The parties also disputed the scope of one specific subdivision of Section 230-a. Subdivision 6 of that section authorizes as a penalty a "[l]imitation on registration or issuance of any further license..." The Petitioner argued that this subdivision enables a hearing committee of the Board for Professional Medical Conduct to rule in a case of professional misconduct by an unlicensed resident that the resident is disqualified from ever receiving such a license. The Petitioner recommended that such a penalty be imposed in this case. The Respondent argued that subdivision 6 cannot authorize a hearing committee to take such action because the granting or denying of a license to

practice medicine is within the exclusive jurisdiction of the New York State Department of Education.

This Hearing Committee does not need to decide this legal issue because we have concluded that, whether or not we have the authority to prohibit the granting of a license to practice medicine, it would be imprudent to do so in this case. One reason is that the Respondent's crime, although obviously a serious act of misconduct, is the only problem disclosed by the hearing record. The hearing record contains no other problems with the Respondent's character and no problems with the quality of medical care that he has provided. Another reason for our determination is that the Respondent is now an intern at Long Island Hospital. We are favorably influenced by the fact that despite being aware of the criminal conviction, the hospital staff was impressed enough with the Respondent to give him this second chance.

By far the most important reason for refraining from granting the prohibition sought by the Petitioner, however, is the nature of that penalty. To prohibit the issuance of a license to an unlicensed resident is a penalty more severe in one crucial respect than the revocation of a license. If a physician's license is revoked, he or she can petition for reinstatement of that license after the passage of three years. The prohibition against granting a license sought by the Petitioner would be permanent. No matter how many years in the future the application is submitted, the application would have to be denied automatically. No matter what the factual situation is at the time that the application is submitted, the Department of Education would have to disregard those facts and deny the application.

If the Respondent ever applies for a license to practice in New York State, it is quite possible that such an application will not be made until many years have passed. Rather than ruling now what the disposition of that application must be, it makes more sense for

the Department of Education to make the determination based on all the relevant facts at the time of the application. It can be assumed safely that the Department of Education will be aware of the criminal conviction and will give it the weight that it deserves in determining whether a license will be granted. For this reason and the other reasons stated above, we refrain from imposing the licensing prohibition sought by the Petitioner.

The Petitioner also sought the issuance of a censure and reprimand. This penalty can and will be imposed. The Petitioner is authorized to notify Long Island Hospital of the imposition of this penalty.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent is censured and reprimanded for having been convicted of the crime of Sexual Abuse in the First Degree.
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: Rochester, New York  
30 October, 2007

Redacted Signature

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**Donald Cherr, M.D.**  
**Chairperson**

**Gregory Fried, M.D.**  
**Robert M. Briber**

# **APPENDIX I**



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

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IN THE MATTER  
OF  
JASON JARAMILLO, M.D.  
CO-06-01-0028-A

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NOTICE OF  
REFERRAL  
PROCEEDING

TO: JASON JARAMILLO, M.D.  
Redacted Address

**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 15<sup>th</sup> day of August, 2007, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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. You may produce evidence or sworn testimony on your behalf. Such evidence 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 which 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. SEAN D. O'BRIEN, 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 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 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 hereby demands 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 which cannot be photocopied.

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 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

*July 13*, 2007

Redated Signature

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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

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IN THE MATTER  
OF  
JASON JARAMILLO, M.D.  
CO-06-01-0028-A

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STATEMENT  
OF  
CHARGES

JASON JARAMILLO, M.D., Respondent, was authorized to practice medicine in New York state from on or about July 1, 2005 to on or about June 30, 2006, as a resident at The Brooklyn Hospital Center, Brooklyn, NY.

**FACTUAL ALLEGATIONS**

A. On or about September 18, 2006, in the Supreme Court of the State of New York, Criminal Term, Part 61, New York County, New York, Respondent was found guilty, based on a plea of guilty, of Sexual abuse in the first degree, in violation of New York Penal Law §130.65, a class D felony, for acts that occurred on or about October 29, 2005, and on or about November 17, 2006, was sentenced to ten (10) years probation, an eight (8) year permanent Order of Protection, that he register as a Level One sex offender, and that he pay \$1,330.00 for a mandatory surcharge, victim service fee, DNA fee, and supplemental sex offender victim's fee.

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(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: *July 13*, 2007  
Albany, New York

Redacted Signature  

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