



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

*Public*

January 2, 2008

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Nina Dlugy, M.D.  
105 Oaktree Place  
Leonia, New Jersey 07605

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180-2299

**RE: In the Matter of Nina Dlugy, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-01) 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.

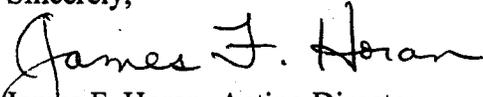
The notice of review served on the Administrative Review Board should be forwarded to:

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,

  
James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

COPY

IN THE MATTER  
OF  
NINA DLUGY, M.D.

DETERMINATION  
AND  
ORDER  
BPMC #08-01

A hearing regarding **Nina Dlugy, M.D.** ("the Respondent") was held on December 19, 2007, at the offices of the New York State Department of Health ("the Petitioner"). The hearing process was initiated by a Notice of Referral Proceeding and a Statement of Charges, both dated November 1, 2007. Pursuant to Section 230(10)(e) of the Public Health Law, **Irving S. Caplan**, Chairperson, **Sheldon Gaylin, M.D.**, and **Lyon M. Greenberg, M.D.**, 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 did not appear at the hearing either in person or by 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)(iii), (b) and (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. All Hearing Committee findings were unanimous.

1. Nina Dlugy, M.D., the Respondent, was authorized to practice medicine in New York State on March 5, 1984, by the issuance of license number 157464 by the New York State Education Department (Petitioner's Ex. 4).

2. On September 15, 2004, in the Municipal Court, Borough of Leonia, New Jersey, the Respondent was found guilty of the crimes of Resisting Arrest, Simple Assault – Attempt to Cause Bodily Injury, and Obstructing Administration of Law – Government Function. The Respondent was sentenced to pay fines of \$1,971.00 (Petitioner's Ex. 5).

3. On January 18, 2007, the New Jersey Department of Law & Public Safety, Division of Consumer Affairs, Board of Medical Examiners ("New Jersey Board"), by an Order of Summary Suspension ("New Jersey Order"), suspended the Respondent's license to practice medicine, based on dishonesty, fraud, deception, misrepresentation, false promise and false pretense; repeated acts of negligence and gross negligence; prescribing or dispensing dangerous substances indiscriminately or without good cause; and permitting unlicensed persons to perform acts for which a license is required (Petitioner's Ex. 6).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent set out in the New Jersey Order 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(2) - "Practicing the profession fraudulently or beyond its authorized scope;"
- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(5) - "Practicing the profession with incompetence on more than one occasion;"
- New York Education Law Section 6530(25) - "Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them;"
- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years."

Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of eighteen years;"

- New York Education Law Section 6530(33) - "Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee;" and

- New York Education Law Section 6530(35) – "Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient..."

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

#### **FIRST AND SECOND SPECIFICATIONS**

"Respondent violated New York Education Law Section 6530(9)(a)(iii) by being 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 the laws of New York state ..."

VOTE: Sustained (3-0)

#### **THIRD 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)

#### **FOURTH SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(d) by having her license to practice medicine suspended and/or having other disciplinary action taken by a duly authorized disciplinary agency of another state, where the conduct resulting in the

license suspension and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

The Respondent did not appear at the hearing either in person or by counsel. The Administrative Law Judge ruled that the Petitioner had met the requirements of law regarding the service of the Notice of Referral Proceeding and the Statement of Charges on the Respondent, and that the hearing could proceed on the merits of the charges despite the absence of the Respondent.

In September of 2004, the Respondent was convicted of three crimes in New Jersey. In January of 2007, the New Jersey Board suspended the Respondent's license to practice medicine for a wide range of unacceptable behavior including responsibility for providing unnecessary medical care, fraudulently billing for medical services that had not been provided, prescribing controlled substances without good cause, and permitting unlicensed persons to perform medical services for which a license is required.

The Petitioner recommended that the Respondent's license to practice medicine be revoked. Since the Respondent did not appear at the hearing, the hearing record contains no evidence of mitigating circumstances, rehabilitation, remorse or any other factor helpful to the Respondent.

The Respondent's acts of professional misconduct were both numerous and serious. This Hearing Committee sees no alternative to a license revocation that will adequately protect the public from the Respondent.

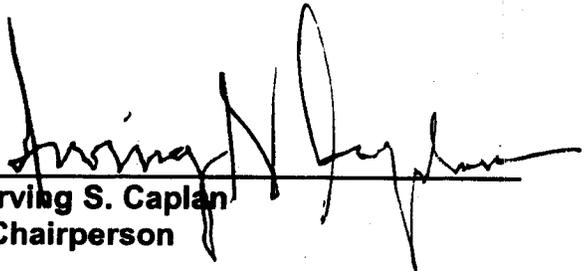
### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent's license 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: Malone, New York  
12-27, 2007



Irving S. Caplan  
Chairperson

Sheldon Gaylin, M.D.  
Lyon M. Greenberg, M.D.

# Appendix I

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



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IN THE MATTER

OF

NINA DLUGY, M.D.  
CO-07-02-0862-A

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NOTICE OF  
REFERRAL  
PROCEEDING

TO: NINA DLUGY, M.D.  
105 Oaktree Place  
Leonia, NJ 07605

**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 19<sup>th</sup> day of December, 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

*Nov 1*, 2007



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

NINA DLUGY, M.D.  
CO-07-02-0862-A

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STATEMENT

OF

CHARGES

**NINA DLUGY**, Respondent, was authorized to practice medicine in New York state on March 5, 1984, by the issuance of license number 157464 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about September 15, 2004, in the Municipal Court, Borough of Leonia, New Jersey, Respondent was found guilty of Resisting Arrest and Simple Assault: Attempt to Cause Bodily Injury, crimes, and was sentenced to pay a \$1,314.00 fine.

B. On or about September 15, 2004, in the Municipal Court, Borough of Leonia, New Jersey, Respondent was found guilty of Obstructing Administration of Law – Govt. Function, a crime, and was sentenced to pay a \$657.00 fine.

C. On or about January 18, 2007, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (hereinafter "New Jersey Board"), by an Order of Summary Suspension (hereinafter "New Jersey Order"), suspended Respondent's, license to practice medicine, based on dishonesty, fraud, deception, misrepresentation, false promise and false pretense; repeated acts of negligence and gross negligence; professional misconduct; prescribing or dispensing dangerous substances indiscriminately or without good cause; and permitting unlicensed persons to perform acts for which a license is required.

D. The conduct resulting in the New Jersey 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 Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(5) (incompetence on more than one occasion);
4. New York Education Law §6530(25) (delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them);
5. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient);
6. New York Education Law §6530(33) (failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee); and/or
7. New York Education Law §6530(35) (ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient).

#### **SPECIFICATIONS**

#### **FIRST AND SECOND SPECIFICATIONS**

Respondent violated New York Education Law §6530(9)(a)(iii) by being 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 the laws of New York state, in that Petitioner charges:

1. The facts in Paragraph A.
2. The facts in Paragraph B.

#### **THIRD 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:

3. The facts in Paragraphs C and/or D.

**FOURTH SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having her license to practice medicine suspended and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

4. The facts in Paragraphs C and/or D.

DATED: *Nov. 1*, 2007  
Albany, New York

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