



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

July 20, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Ralph A. Erbaio, Jr., Esq.
Lifshutz, Polland & Hoffman
675 Third Avenue
New York, New York 10017

Ivan D. Baraque, M.D.
77-18 141 Street – Apartment B
Kew Garden Hills, NY 11367

Ivan D. Baraque, M.D.
865 Cypress Avenue
Ridgewood, New York 11385

RE: In the Matter of Ivan D. Baraque, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-164) 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), 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.

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER
OF
IVAN D. BARAQUE, M.D.

DETERMINATION

AND

ORDER

BPMC #01-164

A Notice of Referral Proceeding and a Statement of Charges, both dated February 27, 2001, were served upon the Respondent, **Ivan D. Baraque, M.D.** **Fred Levinson, M.D.**, Chairperson, **Jill Rabin, M.D.**, and **Randolph Manning, Ph.D.**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on June 21, 2001, at the offices of the New York State Department of Health ("the Petitioner"). The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Paul Robert Maher, Esq.**, and **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Lifshutz, Polland & Hoffman**, 675 Third Avenue, New York, New York, 10017, **Ralph A. Erbaio, Jr., 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.

STATEMENT OF CASE

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 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)(ii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: Ivan D. Baraque, 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. Ivan D. Baraque, M.D., the Respondent, was authorized to practice medicine in New York State on January 28, 1985, by the issuance of license number 161270 by the New York State Education Department (Petitioner's Ex. 4).

2. On March 10, 2000, in the United States District Court, Eastern District of Tennessee, the Respondent was found guilty of mail fraud in violation of 18 U.S.C. Section 1341. On June 20, 2000, the Respondent was sentenced to four months imprisonment at a halfway house, three years supervised release, a \$100.00 assessment and payment of \$60,000.00 in restitution. (Petitioner's Ex. 5 and 7).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the Respondent committed professional misconduct by having been convicted of mail fraud, an act constituting a crime under federal law.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by having been convicted of an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Respondent informed his disability insurance company that he was unemployed when, in fact, he was working part time. This enabled him to receive thousands of dollars in disability insurance benefits to which he was not entitled. For this he was convicted of mail fraud under 18 U.S.C. Section 1341 by the United States District Court for the Eastern District of Tennessee.

The Respondent's crime merits a sanction against his New York State license to practice medicine, but not the revocation of that license sought by the Petitioner. Instead, a two-year suspension of his license will be imposed. The Hearing Committee was impressed by the Respondent during his testimony and has come to the conclusion that the crime was an aberration from the Respondent's normal behavior, that he has learned

an indelible lesson from the criminal proceeding, and that a repetition of such criminal behavior is extremely unlikely. Another factor influencing the Hearing Committee is that the crime was unrelated to patient care or billing for patient care. Although it is indisputable that conviction of any federal crime is professional misconduct and a legitimate basis for imposing sanctions on a physician, whether that crime occurred in the practice of the physician's profession is a relevant factor in determining the sanction to be imposed.

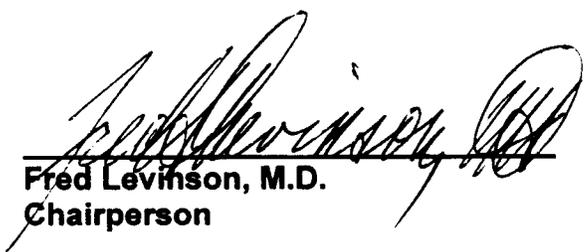
Given the factors in the Respondent's favor that are present in this case, a two-year suspension is a sufficient response to the Respondent's crime.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is suspended for two years.
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Middletown, New York
7/12, 2001


Fred Levinson, M.D.
Chairperson

Jill Rabin, M.D.
Randolph Manning, Ph.D.

APPENDIX I

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

IN THE MATTER

OF

IVAN D. BARAQUE, M.D.
CO-00-06-2865-A

NOTICE OF
REFERRAL
PROCEEDING

TO: IVAN D. BARAQUE, M.D.
77-18 141 Street Apt. B
Kew Garden Hills, NY 11367

IVAN D. BARAQUE, M.D.
865 Cypress Avenue
Ridgewood, NY 11385

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 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 22nd day of March 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON.

EXHIBIT

J. E. 6/2/01

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before March 12, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you 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. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before March 12, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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 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

February 27, 2001



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) 402-0820

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
IVAN D. BARAQUE, M.D.
CO-00-06-2865-A

STATEMENT
OF
CHARGES

IVAN D. BARAQUE, M.D., the Respondent, was authorized to practice medicine in New York state on January 28, 1985, by the issuance of license number 161270 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 10, 2000, in the United States District Court, Eastern District of Tennessee (Chattanooga), Respondent was found guilty of mail fraud, in violation of Title 18, United States Code §1341, and on or about June 20, 2000, was sentenced to four (4) months imprisonment at a halfway house, three (3) years supervised release, and to pay a \$100.00 assessment and \$60,000.00 restitution.

SPECIFICATION

Respondent violated New York Education Law §6530(a)(ii) by having been convicted of an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in paragraphs A.

DATED: *February 27*, 2001
Albany, New York


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