

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

May 23, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

R. Paul Ferenchak, M.D.
REDACTED

Re: License No. 116774

Dear Dr. Ferenchak:

Enclosed is a corrected copy of the vacated New York State Board for Professional Medical Conduct (BPMC) Order No. 10-263. This vacatur order went into effect April 29, 2011. The language immediately preceding the Director's signature on the previous order was incorrect and has now been corrected.

Please direct any questions to: Board for Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180, telephone # (518)402-0863.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

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

IN THE MATTER
OF

R. PAUL FERENCHAK, M.D.
aka RALPH P. FERENCHAK, M.D.

VACATUR
ORDER

Upon the proposed Application for a Vacatur Order Pursuant to N.Y. Pub. Health Law § 230 (10)(q) of R. PAUL FERENCHAK, M.D. (Respondent), which is made a part of this Vacatur Order, it is agreed to and

ORDERED, that the attached Application and its terms are adopted and it is further

ORDERED, that this Vacatur Order shall be effective upon issuance by the Board, either by mailing of a copy of this Vacatur Order by first class mail to Respondent at the address in the attached Application or by certified mail to Respondent's attorney, OR upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 4-29-2011

REDACTED

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

IN THE MATTER
OF

R. PAUL FERENCHAK, M.D.
aka RALPH P. FERENCHAK, M.D.

APPLICATION FOR
VACATUR
ORDER PURSUANT
TO N.Y. PUB.
HEALTH LAW §
230(10)(q)

STATE OF)
COUNTY OF) ss.:

R. PAUL FERENCHAK, M.D., (Respondent) being duly sworn, deposes and says:

That on or about January 1, 1973, I was licensed to practice as a physician in the State of New York, and issued License No. 116774 by the New York State Education Department.

My current address is REDACTED and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to a Determination and Order (BPMC Order # 10-263) of the State Board for Professional Medical Conduct ("Board")(Attachment I) (henceforth "Original Order"), which went into effect on December 14, 2010, and which was issued following a hearing before a Committee of the Board pursuant to the expedited hearing procedures (Direct Referral hearing) in N.Y. Pub. Health Law § 230(10)(p). Pursuant to N.Y. Pub. Health Law § 230(10)(q), I hereby apply to the Board for an Order (henceforth "Vacatur Order"), vacating the Original Order.

I understand and agree that the Director of the Office of Professional Medical Conduct and the Chair of the Board each retain complete discretion either to enter into the proposed Vacatur Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written

or oral communication can limit that discretion.

DATE 4/17/14

REDACTED

~~R. PAUL FERENCIAK, M.D.~~
RESPONDENT

The undersigned joins the Respondent in an application to the chairperson of the State Board for Professional Medical Conduct to vacate BPMC Order #10-263.

DATE: 4/25/11

REDACTED

~~KEITH W. SERVIS~~

Director

Office of Professional Medical Conduct

ATTACHMENT 1

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

IN THE MATTER

OF

R. PAUL FERENCHAK, M.D.
aka RALPH P. FERENCHAK, M.D.

DETERMINATION

AND

ORDER

BPMC No. 10-263

A hearing was held on November 18, 2010, 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 May 21, 2008, were served upon the Respondent, **R. PAUL FERENCHAK, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Irving S. Caplan, Chair, Arsenio G. Agopovich, M.D., and Trevor A. Litchmore, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **Thomas G. Conway, Esq.**, General Counsel, by **Michael G. Bass, Esq.**, of Counsel. The Respondent, **R. Paul Ferenchak, M.D.**, did appear, *pro se*, and was duly served. 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York State. 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 §6530(9)(a)(i), commission of a crime under New York State law. 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:

R. Paul Ferenchak, 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. **R. Paul Ferenchak, M.D.**, the Respondent, did appear at the hearing, *pro se*, and was duly and personally served with process on April 28, 2008. (Petitioner's Exhibit 2.)
2. **R. Paul Ferenchak, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 1 1973, by the issuance of license number 116774 by the New York State Education Department. (Petitioner's Ex. 4)
3. On November 25, 2007, In the Onondaga County Court, State of New York, Respondent was found guilty, after a trial, of Criminal Contempt in the second degree, a Class A misdemeanor, in violation of New York Penal Law § 215.50. (Petitioner's Ex. 5)
4. On November 25, 2007, In the Onondaga County Court, State of New York, Respondent was sentenced for the above crime to a one (1) year conditional discharge, an Order of Protection, a \$20.00 CVAF¹, and a \$140.00 surcharge. (Petitioner's Ex. 5)

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 Penal law, namely Criminal Contempt in the second degree, a Class A misdemeanor, in violation of New York Penal Law § 215.50.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, *pro se*. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process and that jurisdiction had been established over the Respondent.

The record in this case indicates that Respondent was found guilty, after a trial in Onondaga County Court, State of New York, of Criminal Contempt in the second degree, a Class A misdemeanor, in violation of New York Penal Law § 215.50. The Respondent testified that the underlying charges were improper and that he should never have been convicted at the trial held in Syracuse. He indicated that this 2007 conviction is under appeal with the Appellant Division in Rochester.

The panel did not accept this line of argumentation and the Respondent was reminded that the evidence in a Direct Referral proceeding is limited to the nature and severity of the penalty to be imposed and, furthermore, if the Respondent wished to attack the underlying conviction he would have to do so in the Appellate courts and that, for the present, he stands convicted as indicated in the record, which Respondent did not deny. The Respondent was reminded that if he should prevail on his appeal, he could then petition to vacate whatever action the panel in this case imposed.

In his defense, Dr. Ferenchak presented a letter to the panel, (Respondent's Exhibit A) expressing his humiliation and regret for the conviction, again emphasizing that

¹ The "CVAF" is the Crime Victim Assessment Fee, a mandatory surcharge in New York criminal cases.

the conviction was unjust and reminding the panel of his unblemished medical record and history of service to the community. Several testimonial letters were also presented (Respondent's Exhibits B and C) and these show evidence of the respect that Respondent has earned in the medical community of upstate New York.

The Department did not dispute the testimonials submitted on behalf of the Respondent and recommended a Censure and Reprimand.

In its deliberations, the panel took into consideration the full range of penalties available in a case such as this and recognized that there was no issue of medical care and that the Respondent, up until this incident, had an unblemished record. The panel also noted that the sentence in this matter was a conditional discharge and that no additional problems or concerns were indicted by the Department.

As to the penalty, the Hearing Committee agreed with the Department's counsel and determined that the people of New York State would be protected by a Censure and Reprimand. Thus, on review of all the facts and circumstances in this case, the panel determined that the Respondent should be censured and reprimanded for the conviction in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded.
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
December 3, 2010**

REDACTED

Irving S. Caplan, Chair

Arsenio G. Agopovich, M.D.
Trevor A. Litchmore, M.D.

To:

R. Paul Ferenchak, M.D.

REDACTED

Michael G. Bass, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

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APPENDIX 1

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



IN THE MATTER
OF

R. PAUL FERENCHAK, M.D.
aka RALPH P. FERENCHAK, M.D.
CO-07-11-6858-A

NOTICE OF
REFERRAL
PROCEEDING

TO: R. PAUL FERENCHAK, M.D.
aka RALPH P. FERENCHAK, M.D.

REDACTED

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 18th day of June, 2008, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th 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

April 22, 2008

REDACTED

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

IN THE MATTER
OF
R. PAUL FERENCHAK, M.D.
aka RALPH P. FERENCHAK, M.D.
CO-07-05-2883-A

STATEMENT
OF
CHARGES

R. PAUL FERENCHAK, M.D., aka RALPH P. FERENCHAK, M.D., Respondent, was authorized to practice medicine in New York state on January 1, 1973, by the issuance of license number 116774 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 5, 2007, in the Onondaga County Court, Onondaga, New York, Respondent was found guilty of Criminal contempt in the second degree, in violation of New York Penal Law §215.50, a class A misdemeanor, and was sentenced to a one (1) year conditional discharge, an Order of Protection, a \$20.00 CVAF, and a \$140.00 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: *April 22*, 2008
Albany, New York

REDACTED

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