



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

March 27, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mihai Merzianu, M.D.

Redacted Address

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

Terrence M. Connors, Esq.
Connors & Vilardo, LLP
1000 Liberty Building
424 Main Street
Buffalo, New York 14202

RE: In the Matter of Mihai Merzianu, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-51) 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,

Redacted 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

IN THE MATTER
OF
MIHAI MERZIANU, M.D.

DETERMINATION

AND

ORDER

BPMC #09-51

COPY

A hearing was held on February 19, 2009, 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 November 6, 2008, were served upon the Respondent, **MIHAI MERZIANU, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **John B. Waldman, M.D.**, Chair, **Trevor A. Litchmore, M.D.**, and, **Ann Ford Fricke, M.S., N.P.**, 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 Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent, **MIHAI MERZIANU, M.D.**, was duly served and appeared with counsel, **Terrence M. Connors, Esq. of Connors & Vilardo, LLP.** 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. In such cases, a licensee is charged with misconduct based upon a guilty finding in an adjudicatory proceeding of violating a New York State statute or regulation regarding conduct that would amount to professional misconduct. 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) in that he was convicted of assault in the second degree, in violation of New York Penal Law § 120.05. 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:

MIHAI MERZIANU, M.D.

Richard Cheney, M.D.
Maureen Sullivan, D.D.S.

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. MIHAI MERZIANU, M.D. did appear at the hearing and was duly served and notified of the hearing on November 12, 2008. (Petitioner's Exhibit 2.)
2. The Respondent, MIHAI MERZIANU, M.D., was authorized to practice medicine in New York State on September 14, 2005, by the issuance of limited license number 002455 by the New York State Education Department (Petitioner's Ex. 4).
3. On or about September 19, 2007, in the Supreme Court of the State of New York, New York County, respondent was convicted of assault in the second degree, in violation of New York Penal Law §120.05, a class D felony and was sentenced to one (1) day of imprisonment, two hundred fifty (250) hours of community service, a \$5,000.00 fine plus surcharges. (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(a)(i) by having been convicted of committing an act constituting a crime under New York State Law, specifically, New York Penal Law §120.05, assault in the second degree.

VOTE: Sustained (3 - 0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel, and was duly served. It is clear from the documentary record and there was no dispute about the fact that the Respondent was convicted of a felony in New York County. As to the merits of the case, the Department contended that the record shows that the Respondent was charged with and convicted of a serious offense, assault in the second degree.

While egregious on its face, the felony charge of assault was softened considerably by the testimony and explanation presented at the hearing. In his summation at the hearing, the Department's Attorney, Mr. Bogan, explained to the panel what had transpired to bring about the felony conviction. Mr. Bogan, (TR. 53) explained the circumstances and it was made evident that there was a serious car accident during rush hour in Manhattan at the busy intersection of York Avenue and 60th Street at the entrance to the FDR drive. The Respondent was driving his vehicle behind several cars waiting for the left turn signal and he proceeded, apparently out of impatience, to cross the yellow line and proceeded the wrong way on the northbound side of the avenue, passing other cars that were attempting to make the legal turn. (TR. 54)

The Respondent's reckless driving led to a collision with a car in the opposite lane, which, in turn caused another vehicle to pin a traffic enforcement agent against the divider causing him to sustain serious, and permanent, injuries. (TR. 54)

It should also be noted that the Department's Attorney acknowledged that the Respondent is a good physician with an excellent reputation. The quality and importance of the Respondent's work at Roswell Park was made evident to the panel by the excellent documentation and supportive evidence admirably presented by Attorney Connors.

The record is showing that the New York County District Attorney had offered to settle this matter with a plea to a misdemeanor prior to trial. (A 15). This offer was refused by the Respondent as he wished to prove his innocence at trial. The trial court found him guilty and imposed the felony sentence that brought about this proceeding. The First Hearing on this matter was adjourned pending the outcome of the Appeal. In the interim, the Commissioner lifted the Summary Suspension, following the Recommendation of the initial Hearing Committee, which found that the Respondent did not present an imminent danger to the people and that his work at Roswell Park was important. The Appellate Division, First Department, in December, affirmed the trial court conviction and thus the matter was put back on the calendar for the present hearing.

The Hearing Committee was impressed by the remorse shown by the Respondent. He indicated to the panel that he would have to live the rest of his life with the burden of the injury he caused and that it has been the most trying period of his life. (TR. 45) The panel believed the Respondent when he testified that the accident has become part of his being and will be with him forever, together with the image of the unfortunate victim. (TR. 47).

The Hearing Committee was also impressed with his character witnesses and by the evidence of the good work that the Respondent has been doing at Roswell Park. As to the penalty, the Department's attorney acknowledged that the Respondent is, in his estimation, a good physician, but because of the level of the offense he recommended a Censure and Reprimand, \$5,000 fine, and one year stayed suspension. The Hearing Committee determined, unanimously, that the Respondent has already paid for his offense and, while considering the full range of penalties, determined that a Censure and Reprimand would be appropriate in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded for commission of a felony under New York State Law .
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: Albany, New York
March 24, 2009**

Redacted Signature

John B. Waldman, M.D., Chair

**Trevor A. Litchmore, M.D.
Ann Ford Fricke, M.S., N.P.**

To:

**MIHAI MERZIANU, M.D.,
Respondent**

Redacted Address

Terrence M. Connors, Esq.
Connors & Vilaro, LLP
Attorney for Respondent
1000 Liberty Building
424 Main Street
Buffalo, NY 14202

Robert Bogan, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

APPENDIX 1



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

IN THE MATTER
OF
MIHAI MERZIANU, M.D.
CO-07-11-6626-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: MIHAI MERZIANU, M.D.
Redacted Address

MIHAI MERZIANU, M.D.
Roswell Park Cancer Institute
Elm & Carlton Street
Buffalo, NY 14263

The undersigned, Richard F. Daines, M.D., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that MIHAI MERZIANU, M.D., Respondent, licensed to practice medicine in the State of New York on September 14, 2005, by limited license number 002455, has been convicted of committing an act constituting a felony under New York State law, as is more fully set forth in the Statement of Charges attached, hereto, and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), effective immediately MIHAI MERZIANU, M.D., shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law §230(12).

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN
DEFIANCE OF THIS COMMISSIONER'S ORDER SHALL
CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE
MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY
CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY,
DEFINED BY NEW YORK EDUCATION LAW §6512.

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 21st day of August 2008, at 10:00 a.m., at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing 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, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
July 14, 2008

Redacted Signature

RICHARD F. DAINES, M.D.
Commissioner of Health
State of New York
Department of Health

Inquires should be addressed to:

Robert Bogan
Associate Counsel
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
MIHAI MERZIANU, M.D.
CO-07-11-6626-A

STATEMENT
OF
CHARGES

MIHAI MERZIANU, M.D., Respondent, was authorized to practice medicine as a Physician in New York state on September 14, 2005, by the issuance of limited license number 002455 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 19, 2007, in the Supreme Court of the State of New York, New York County, New York, Respondent was convicted of assault in the second degree, in violation of New York Penal Law §120.05, a class D felony, and on or about November 19, 2007, was sentenced to one (1) day imprisonment, two hundred fifty (250) hours of community service, a \$5,000.00 fine, a \$20.00 CVAF, a \$50.00 DNA, and a \$250.00 surcharge.

SPECIFICATION

Respondent violated New York State Education Law §6530(9)(a)(i) by having been 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 14*, 2008
Albany, New York

Redacted Signature

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