

April 7, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ronald R. DiScenza, M.D.
Central Pain Medicine
2150 Central Avenue
Yonkers, New York 10710

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Michael S. Kelton, Esq.
Abrams, Fensterman, Fensterman, Eisman,
Formato, Ferrara & Wolf, LLP
630 Third Avenue – 5th Floor
New York, New York 10017

RE: In the Matter of Ronald R. DiScenza, M.D.

Dear Parties:

Enclosed please find the **Corrected** Determination and Order (No. 14-54) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER

OF

RONALD R. DI SCENZA, M.D.
FR-11-01-0005-A

DETERMINATION

AND

ORDER

BPMC #14-54

A hearing was held on January 23, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges both dated September 24, 2013, were served upon the Respondent, Ronald R. Di Scenza, M.D. Pursuant to Section 230(10)(e) of the Public Health Law, Mohammad-Reza Ghazi-Moghadam, M.D., Chairperson, Reid T. Muller, M.D. and William W. Walence, Ph.D. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Christine C. Traskos, Esq. Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James Dering, Esq., General Counsel, by Michael G. Bass, Esq. of Counsel. The Respondent appeared by Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf LLP by 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 proceeding was brought pursuant to Public Health Law Section 230(10). The statute provides for an expedited hearing when a licensee is charged 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 this case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d) and Education Law Section 6530(9)(a)(i). The Respondent is also charged with a violation of Education Law Section 6530(2).

Copies of the Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner:	None
For the Respondent:	Ronald R. Di Scenza, 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." or transcript page numbers ("T."). 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. Ronald R. Di Scenza, M.D., the Respondent, was authorized to practice medicine in New York State on November 16, 1979 by the issuance of license number 140670 by the New York State Education Department. (Petitioner's Ex. 3)

2. On or about December 4, 2012, the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners (hereinafter New Jersey Board"), by FINAL ORDER, ordered, that Respondent permanently surrender his license to practice medicine in the State of New Jersey, effective as of the close of business on December 31, 2012. In an Order to Show Cause and Verified Complaint, the Attorney General of New Jersey had alleged fraudulent performance and preparation of fabricated patient records for electrodiagnostic studies; conspiracy to defraud and/or failure to supervise professional services of employees and independent contractors and conspiracy to share fabricated test data with others; gross and/or repeated negligence and/or fraud/misrepresentation in examinations and diagnostic testing; failure to disclose multiple practice entities on biennial registration and to disclose an arrest in New York State. Respondent had also been made aware of a separate investigation underway regarding, Respondent's pain management practice in connection with several aspects of Respondent's prescribing of Controlled Substances for multiple New Jersey patients. (Petitioner's Ex. 4)

3. Respondent agreed to be bound by the terms of the December 4, 2012 FINAL ORDER, which included the surrender of his medical license in New Jersey and payment of costs and penalties totaling \$100,000. (Petitioner's Ex. 4)

4. On or about January 6, 2010, in the Town of Clarkstown, State of New York, Respondent was charged with four (4) felonies. (Petitioner's Ex. 5, Respondent's Ex. A)

5. On or about March 27, 2013, in the Town of Clarkstown Court, Respondent pled guilty to a violation of New York State Tax Law Section 1801(a), a misdemeanor. On or about July 17, 2013, in the Town of Clarkstown Court, Respondent was sentenced to three (3) years of probation and a \$205.00 surcharge. (Petitioner's Ex. 7; Respondent's Ex. A)

6. On or about December 7, 2010, Respondent prepared and/or submitted to the New York State, Education Department, a registration Renewal Document, wherein he falsely answered "No" to the question, "since your last registration application, 3) Are criminal charges pending against you in any court?" (Petitioner's Ex. 6; Respondent's Ex.A)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: Sustained (3-0)

SECOND 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.

VOTE: Sustained (3-0)

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently.

VOTE: Sustained (3-0)

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent testified on his own behalf and addressed all three violations. Respondent stated that he had been performing EMG and NCS (Nerve Conduction Studies) as part of his pain management practice. (T. 38) Respondent stated that he was recruited to perform this type of testing at a referring physician's office with a mobile machine that was owned by the technicians. (T. 39, 76) Respondent testified that the technicians performed the NCS part of the exam and then called him for the needle part of the test.(T. 40) Respondent later reviewed and signed off on the data and forwarded it back to the referring physicians.(T. 41) Respondent further stated that he had no contractual agreements with the referring physicians. (T. 77) Respondent pointed out to the Hearing Committee that the New Jersey Board made no findings of fraud or that he was deficient in performing the tests. (T. 38-40) Respondent testified that he negotiated the settlement with the New Jersey Attorney General without the benefit of counsel. Respondent offered to voluntarily surrender his license because he no longer planned to practice in New Jersey. (T. 46-47)

With respect to the tax violation, Respondent accepted full responsibility. He noted that he had paid his Federal taxes during that time period and was never charged with income tax evasion. Respondent testified that he had some problems with his accountant but has now made restitution on the back taxes. (T.48-49) Respondent also addressed the charge that he failed to disclose his pending

criminal charges on his license renewal application in 2010. Respondent told the Hearing Committee that he had become complacent in filling out the renewal forms and that his incorrect answer was unintentional. In a letter dated March 27, 2012, Respondent notified the Education Department to correct the mistake. (Respondent's Ex. D)

The Hearing Committee believes that Respondent was clueless about the future implications when he surrendered his license to the New Jersey Medical Board without the benefit of counsel. The Hearing Committee also finds that there is no evidence to suggest that Respondent was unjustly compensated for performing the nerve conduction tests. Even the Department stipulated that Geico Insurance dropped Respondent as a party to their fraud based lawsuit. (T. 43, Respondent's Ex. J) With respect to the tax issue, the Hearing Committee can appreciate that there was a lack of communication between Respondent and his accountant. They note that the matter was reduced to a low level misdemeanor for which Respondent has made restitution. With respect to the renewal application issue, the Hearing Committee believes that Respondent did not self-report his error to the Education Department until a red flag was raised by OPMC's investigation.

The Department seeks revocation of Respondent's license based on the issue of Respondent's character and veracity. The Hearing Committee finds that while Respondent has committed misconduct, he has already surrendered his license in New Jersey and continues to pay them a hefty civil penalty. There is no evidence of patient harm in the record. Over 200 patients signed a petition in support of Respondent. (Respondent's Ex. H1-H19) The Hearing Committee

believes that Respondent continues to provide valuable services to his patients and has a demonstrated record of public service in the community where he lives. Respondent also told the Hearing Committee that he would pay close attention to detail in his practice of medicine in the future.

As a result, the Hearing Committee concludes that Respondent's license to practice medicine in New York State will be suspended for a period of five (5) years following the effective date of this Determination and Order. The suspension shall be stayed in its entirety and Respondent shall be placed on probation for a period of five (5) years. The terms of probation are attached hereto as Appendix II and are incorporated into this Order. The Hearing Committee cautions Respondent to provide his full attention to each provision of the terms of probation. They believe that probation for this extended period adequately protects the safety of the public and allows Respondent to continue to practice medicine under the scrutiny of OPMC.

This determination was reached after due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are SUSTAINED;
2. Respondent's license to practice medicine in New York State is SUSPENDED for a period of **FIVE (5) YEARS**, said suspension to be STAYED in its entirety; and
3. Respondent shall be on probation for a period of **FIVE (5) YEARS** and shall comply with the terms of the probation which are attached hereto as Appendix II and are incorporated into this Order;
4. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Amsterdam, New York

APR, 4TH, 2014

REDACTED

**Mohammad-Reza Ghazi-Moghadam, M.D.,
Chairperson**

**Reid T. Muller, M.D.
William W. Walence, Ph.D.**

TO:

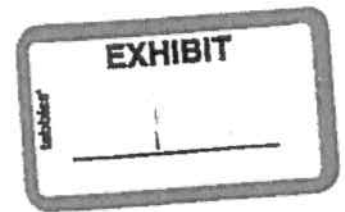
Ronald R. Di Scenza, M.D.
Central Pain Medicine
2150 Central Avenue
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Michael S. Kelton, Esq.
Abrams, Fensterman, Fensterman, Eisman,
Formato, Ferrara & Wolf LLP
630 Third Avenue- 5th Floor
New York, NY 10017

Michael G. Bass, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower- Rm. 2512
Empire State Plaza
Albany, NY 12237

APPENDIX I

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



IN THE MATTER
OF
RONALD R. DI SCENZA, M.D.

NOTICE
OF
HEARING

TO: Ronald R. Di Scenza, M.D.
Central Pain Medicine
2150 Central Ave.
Yonkers, NY 10710

Ronald R. Di Scenza, M.D.
REDACTED

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. 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 December 11, 2013, at 10:30 a.m., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-719, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses

and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here _____

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), 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

Inquiries should be directed to:
Michael G. Bass, Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER
OF
RONALD R. DI SCENZA, M.D.
FR-11-01-0005-A

STATEMENT
OF
CHARGES

RONALD R. DI SCENZA, M.D., Respondent, was authorized to practice medicine in New York state on or about November 16, 1979, by the issuance of license number 140670 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 4, 2012, the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners (hereinafter "New Jersey Board"), by FINAL ORDER, ordered, *inter alia*, that Respondent permanently surrender his license to practice medicine in the State of New Jersey, effective as of the close of business on December 31, 2012. In an Order to Show Cause and Verified Complaint, the Attorney General of New Jersey had alleged, *inter alia*, fraudulent performance and preparation of fabricated patient records for electrodiagnostic studies; conspiracy to defraud and/or failure to supervise professional services of employees and independent contractors and conspiracy to share fabricated test data with others; gross and/or repeated negligence and/or fraud/misrepresentation in examinations and diagnostic testing; failure to disclose multiple practice entities on biennial registration and to disclose an arrest in New York State. Respondent had also been made aware of a separate investigation underway regarding, *inter alia*, Respondent's pain management practice in connection with several aspects of Respondent's prescribing of Controlled Substances for multiple New Jersey patients.

B. 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 section of New York State law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
and/or

2. New York Education Law §6530(3) (negligence on more than one occasion);
and/or
3. New York Education Law §6530(4) (gross negligence).

C. On or about January 6, 2010, in the Town of Clarkstown, State of New York, Respondent was charged with four (4) felonies and arraigned in the Town of Clarkstown Court. On or about March 27, 2013, in the Clarkstown Town Court, State of New York, Respondent pled guilty to New York State Tax Law Section 1801(a), a misdemeanor. On or about July 17, 2013, in the Clarkstown Town Court, State of New York, Respondent was sentenced to three (3) years of probation and a 205.00 surcharge.

D. On or about December 7, 2010, Respondent prepared and/or submitted to the New York State, Education Department, a registration Renewal Document, wherein he falsely answered "No" to the question, "since your last registration application, 3) Are criminal charges pending against you in any court?"

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and B.

SECOND 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:

2. The facts in Paragraph C.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

3. The facts in Paragraphs C and D.

DATED: *Sept. 24*, 2013
Albany, New York

REDACTED

MICHAEL A. HISER
Acting Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), 150 Broadway, Suite 355, Menands, New York 12204-2719. Said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall provide the Director of OPMC with 90 days' notice prior to his return to practice medicine in New York State.

8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.