

November 4, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Enrico Melson, M.D.
1443 South Fairfax Avenue
Los Angeles, California 90019

Enrico Melson, M.D.

REDACTED

RE: In the Matter of Enrico Melson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-283) 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

IN THE MATTER
OF
ENRICO MELSON, M.D.

DETERMINATION
AND
ORDER
BPMC #14-283

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A Notice of Referral Proceeding and Statement of Charges, both dated July 28, 2014, were served upon Enrico Melson, M.D. ("Respondent"). A hearing, pursuant to N.Y. Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§301-307 and 401, was held on September 17, 2014 at the Department's offices at 150 Broadway, Albany, New York. At the hearing, the Department withdrew Factual Allegations B and C and the Second Specification of Charges. The Statement of Charges with Factual Allegations B and C and the Second Specification of Charges crossed out was renamed "Amended Statement of Charges." The Notice of Referral Proceeding and Amended Statement of Charges are attached as Appendix 1.

Peter B. Kane, M.D., Eleanor Lombardi Wilk, D.O., and David F. Irvine, DHSc, RPA-C, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee ("Committee") in this matter. Ann H. Gayle, Administrative Law Judge, served as the administrative officer. The Department appeared by Jude B. Mulvey, Associate Counsel. The Respondent did not appear and did not submit an answer to the charges. Evidence was received and a transcript of this hearing was made.

After consideration of the entire record, the Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to PHL §230(10)(p) which provides for a hearing with circumscribed issues when a licensee is charged with misconduct under N.Y. Education Law ("Educ. Law") §6530(9) based upon a criminal conviction under state law regarding conduct that would amount to a crime if committed in New York, and/or upon an administrative adjudication in another state regarding conduct that would amount to professional misconduct if committed in New York and/or upon a criminal conviction under federal law. The scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee. In the instant case, Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(a)(iii) for having been convicted of a crime under the laws of another jurisdiction.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in brackets, which refer to transcript page numbers ["T"] and exhibits ["Ex"] that were accepted into evidence, represent evidence found persuasive by the Committee in arriving at a particular finding. All Committee findings were unanimous.

1. Respondent did not appear at the hearing although notified of the hearing by personal service on July 31, 2014. [Ex 2]
2. Respondent was authorized to practice medicine in New York State on June 4, 1984 by the issuance of license number 158321 by the New York State Education Department. [Ex 3]
3. On March 8, 2012, Respondent was sentenced to incarceration for four years, suspended

entirely, placed on probation for 5 years, and ordered to make restitution in the amount of \$139,000 and to pay various fines for his conviction on Count 01 of Case No. BA360948 in California Superior Court, Los Angeles County ("California Court") based on his January 28, 2011 plea to Penal Code §12022.6(a)(1)¹. [Ex 4; Ex 5]

CONCLUSIONS OF LAW

Respondent was charged in the Specification of Charges remaining in the Amended Statement of Charges with professional misconduct under Educ. Law §6530(9)(a)(iii) by having been convicted of a crime under the laws of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (First Specification). The Committee finds that Respondent's crime of tax evasion, if committed in New York, would have constituted a crime under New York state law. [T 7, 12-13]

As such, the Committee unanimously concludes that the First Specification is sustained.

DETERMINATION AS TO PENALTY

The Committee, in considering the full range of penalties available pursuant to PHL Law §230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license²; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) a fine up to \$10,000 per specification sustained; (8) a course of education or training; (9) performance of public service; and, (10) probation, unanimously concluded that a monetary penalty in the amount of \$10,000,

¹ *Count 01 included allegations of a violation of Revenue & Taxation Code §19706 and Penal Code §12022.6(a)(1)*
² *the penalty the Department was seeking*

coupled with probation for two years, is an appropriate penalty for Respondent's wrongdoing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The misconduct charge under Educ. Law §6530(9)(a)(iii) of having been convicted of a crime under the laws of another jurisdiction is sustained.
2. Pursuant to PHL §230-a(7) Respondent shall pay a fine in the amount of \$10,000.
3. Pursuant to PHL §230-a(9) Respondent shall be placed on Probation for a period of two (2) years, tolled when Respondent is not registered and not practicing medicine in NYS. Terms of Probation are attached to this Determination and Order as Appendix 2.
4. This order shall be effective upon service on the Respondent by personal service or by certified mail as required under PHL §230(10)(h)

DATED: NOV 3, 2014, New York
_____, 2014

REDACTED
~~PETER B. KANE, M.D., Chair
ELEANOR LOMBARDI WILK, D.O.
DAVID F. IRVINE, DHSc, RPA-C~~

To: Jude Mulvey
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower
Empire State Plaza
Albany, New York 12237

Enrico Melson, M.D.
1443 South Fairfax Avenue
Los Angeles, California 90019

Enrico Melson, M.D.

REDACTED

APPENDIX 1

Matter of Enrico Melson, M.D.

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

EXHIBIT
1
L.P. 9-17-14

IN THE MATTER
OF
ENRICO MELSON, M.D.
CO-13-04-1622A

NOTICE OF
REFERRAL
PROCEEDING

TO: Enrico Melson, M.D.
1443 South Fairfax Avenue
Los Angeles, CA 90019

Enrico Melson, 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 17th day of September, 2014, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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,
Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, ATTENTION:
HON. JAMES F. HORAN, ACTING 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 (10) 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 (10) 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 (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) 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 demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

**YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE
MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here _____

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 (5) 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

July 28, 2014

REDACTED

~~_____
MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct~~

Inquiries should be addressed to:

Jude B. Mulvey
Associate 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
ENRICO MELSON, M.D.
CO-13-04-1622A

AMENDED
STATEMENT
OF
CHARGES

AG
9-17-11

ENRICO MELSON, M.D., Respondent, was authorized to practice medicine in New York State on June 4, 1984, by the issuance of license number 158321 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 8, 2012, in the Superior Court of California, County of Los Angeles, Respondent was found guilty, based on his plea of guilty to one count of Failure To File Income Tax Return, in violation of California Revenue and Taxation Code Section 19706, a felony. Respondent was sentenced to four years incarceration, suspended in its entirety, placed on five years probation, and ordered to pay fines, and restitution of \$139,000.

~~B. On or about March 27, 2013, the Medical Board of California, Department of Consumer Affairs, State of California (hereinafter "California Board"), adopted a proposed Decision and Order (hereinafter "California Order") and revoked Respondent's license to practice medicine based on his conviction of the crime of tax evasion, a crime substantially related to the qualifications, functions and duties of a physician. Respondent filed a motion for reconsideration and by Decision After Reconsideration dated August 16, 2013 ("California Reconsideration Order") the California Board stayed the revocation of Respondent's California medical license and placed him on five years probation. The California Board specifically noted that Respondent's conduct was evidence of unfitness to perform his duties in a manner consistent with the public health, safety, and welfare.~~

AG
9-17-14

~~C. The conduct resulting in the California 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(20) (moral unfitness).~~

AG
9-17-14

SPECIFICATIONS
FIRST SPECIFICATION

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 New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

~~Respondent violated New York Education Law §6530(9)(d) by having voluntarily or otherwise surrendered his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:~~

AG
9-17-14

2. The facts in Paragraphs B and C.

DATED: July 28, 2014
Albany, New York

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

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), Riverview Center, 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 shall provide the Director of OPMC with 90 days' notice prior to his return to practice medicine in New York State.
6. 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.
7. 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 law.