

August 16, 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

William Gibbs, Jr., M.D.  
75-68 178<sup>th</sup> Street  
Fresh Meadows, New York 11366

Charles E. Kutner, Esq.  
Law Offices of Charles E. Kutner, LLP  
110 East 59<sup>th</sup> Street – 25<sup>th</sup> Floor  
New York, New York 10022-1304

**RE: In the Matter of William Gibbs, Jr., M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 13-246) 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

-----X  
IN THE MATTER : DETERMINATION  
OF :  
WILLIAM GIBBS, JR., M.D. : AND  
CO-11-07-4025-A : ORDER  
-----X : BPMC#13-246

A Commissioner's Order, Notice of Referral Proceeding and Statement of Charges, dated April 22, 2013, were served upon the Respondent, William Gibbs, Jr., M.D. AIRLIE A.C. CAMERON, M.D., M.P.H. (Chair), MARY E. RAPPAZZO, M.D., and GAIL S. HOMICK HERRLING, 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. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Jude B. Mulvey, Esq., Associate Counsel. The Respondent appeared by the Law Offices of Charles E. Kutner, LLP, Charles E. Kutner, Esq., of Counsel. A hearing was held on July 24, 2013. Evidence was received and witnesses sworn and heard 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 where a licensee is charged solely with a violation of Education Law §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 which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(ii) [conviction of committing an act constituting a crime under federal law]. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. William Gibbs, Jr., M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on August 15, 2002 by the issuance of license number 226006 by the New York State Education Department. (Exhibit #4).

2. On or about November 12, 2012, in the United States District Court, Southern District of New York, Respondent was found guilty, based upon a plea of guilty, to one count of Health Care Fraud, in violation of 18 USC §1347, a felony. Respondent was sentenced to five years of probation, restitution in the amount of \$1,440,669.00, \$100.00 fee and two hundred (200) hours of community service. (Exhibit #5).

### CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a

unanimous vote of the Hearing Committee unless noted otherwise.

The evidence established that Respondent was convicted of committing a crime under federal law. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(a)(ii). Therefore, the Hearing Committee voted to sustain the First Specification of professional misconduct set forth in the Statement of Charges.

#### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, by a vote of 2-1 determined that Respondent's license to practice medicine should be suspended for a period of three years. The suspension shall be stayed, and Respondent placed on probation for a period of three years. The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

In considering the sanction to be imposed, it is instructive to review the crime to which Respondent pled guilty. United States Code § 1347 provides that "(a) Whoever knowingly

and willfully executes, or attempts to execute, a scheme or artifice (1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program", is guilty of health care fraud. United States Code §1347(b) further provides that "a person need not have...specific intent to commit a violation of this section".

In the instant case, Respondent used an existing professional corporation "Total Body Medical Diagnostics, P.C." to establish "no fault insurance clinic", where accident victims came for medical evaluation and treatment. The practice was actually run by non-physicians who submitted false claims for medical services from clinics in multiple locations, thereby collecting large sums of money. Respondent acknowledged signing large numbers of claims, and further admitted that he failed to verify the authenticity of the bills before signing them. By entrusting all operations to others without providing effective oversight, Respondent enabled a wide ranging scheme which resulted in more than a million dollars in fraudulent claims.

Respondent has, until now, had a distinguished career in rehabilitation medicine, running the departments of several major New York City hospitals. He presented very moving testimony from two of his patients, as well as by his parents. It is clear that

Respondent does not lack skills and knowledge necessary to practice medicine. The issue is whether he lacks the fundamental integrity to remain a member of the profession. A majority of the members of the Committee believe that Respondent's criminal conduct derived from a naïve faith in the good nature of others, rather than from a desire to achieve unjust enrichment at the expense of insurance companies.<sup>1</sup>

In exercising our independent judgment as to the sanction to be imposed, we do take some guidance from the fact that the Court imposed probation instead of incarceration - a departure from the federal sentencing guidelines of thirty-seven to forty-six months of prison. Similarly, we determined that the public interest would not be served by revoking Respondent's medical license.

A period of stayed suspension, with probation is the most appropriate balance of the need to punish Respondent and protect the public. We sincerely hope that Respondent takes this opportunity to rehabilitate himself, and once again practice the profession.

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<sup>1</sup> The dissenting member of the Hearing Committee believes that the lack of integrity demonstrated by Respondent's criminal conduct warranted an outright revocation of his medical license.



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ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;
2. Respondent's license to practice medicine in New York State be and hereby is SUSPENDED for a period of THREE (3) YEARS. Said suspension shall be STAYED and Respondent placed on probation for a period of THREE (3) YEARS from the effective date of this Determination. The complete terms of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein;
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Tupper Lake, New York  
August 14, 2013

REDACTED

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AIRLIE A.C. CAMERON, M.D., M.P.H. (CHAIR)

MARY E. RAPPAZZO, M.D.  
GAIL HOMICK HERRLING

TO: Jude B. Mulvey, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower - Room 2512  
Albany, New York 12237

William Gibbs, Jr., M.D.  
75-68 178<sup>th</sup> Street  
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110 East 59<sup>th</sup> Street - 25<sup>th</sup> Floor  
New York, NY 10022-1304

## APPENDIX I

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

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IN THE MATTER  
OF  
WILLIAM GIBBS, JR., M.D.  
CO-11-07-4025-A

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STATEMENT  
OF  
CHARGES

WILLIAM GIBBS, JR., M.D., Respondent, was authorized to practice medicine in New York state on August 15, 2002, by the issuance of license number 226006 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 14, 2012, in the United States District Court, Southern District of New York, Respondent was found guilty, after a plea of guilty to one count of Health Care Fraud in violation of 18 USC § 1347, a felony. He was sentenced to five years probation, restitution in the amount of \$1,440,669.00, \$100 fee and two hundred (200) hours of community service.

SPECIFICATION

Respondent violated New York State Education Law §6530 (9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law, in that Petitioner charges

1 The facts in Paragraph A.

DATED *April 22* 2013  
Albany, New York

REDACTED

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

APPENDIX II

## **William Gibbs, Jr., M.D. 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/her 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, Menands, New York 12204; 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. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. 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 the 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.
6. Respondent's professional performance may be reviewed by the Director of the 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/her staff at practice locations or OPMC offices.
7. 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.

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.