



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

July 19, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Amy Kulb, Esq.
Jacobson, Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, New York 11530

Roman Johnson, M.D.



Pooja Rawal, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Roman Johnson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17- 193) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm
Enclosure

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

C - Y

**IN THE MATTER
OF
ROMAN JOHNSON, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-17-193

The New York State Department of Health ("Department") charged Roman Johnson, M.D. ("Respondent"), with professional misconduct in violation of New York State Education Law § 6530(9)(a)(ii), for committing an act constituting a crime under federal law.

A hearing was held on April 20, 2017. Administrative Law Judge Jankhana Desai presided over the hearing. Pursuant to Section 230(10)(e) of the Public Health Law ("PHL"), Ruth Horowitz, Ph.D., Chairperson, Florence Kavalier, M.D., and Rose Berkun, M.D., duly designated members of the State Board for Professional Medical Conduct ("BPMC"), served as the Hearing Committee ("Committee").

The Department appeared by Pooja Rawal, Senior Attorney for the Bureau of Professional Medical Conduct. Respondent appeared by Amy Kulb, Attorney at Law. Evidence was received, and a transcript of the proceeding was made. The Committee held deliberations on April 20, 2017 and June 27, 2017. The record closed on June 27, 2017. After consideration of the entire record, the Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to PHL § 230(10)(p), a statute that provides for a direct referral proceeding when a licensee is charged solely with a violation of Educ. Law § 6530(9). In

this case, Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii), for being convicted of an act constituting a crime under federal law. Respondent was convicted of Conspiracy to Commit Health Care Fraud under 18 U.S.C. §§ 1349 and 1347.

The scope of this direct referral hearing is limited to an assessment of the nature and severity of the penalty to be imposed upon the licensee.

FINDINGS OF FACT

The Committee made the following findings of fact unanimously:

1. Respondent was authorized to practice medicine in New York State on or about September 23, 2008, by the issuance of license number 250497, by the New York State Education Department.

2. On March 6, 2015, in the United States District Court, Eastern District of New York, Respondent pled guilty to Conspiracy to Commit Healthcare Fraud, a felony, in violation of 18 U.S.C. §§ 1349 and 1347. On May 26, 2016, Respondent was convicted and sentenced to five years of probation, payment of a \$100 court assessment, and payment of \$5,386,362.94 in criminal forfeiture, for which he is jointly liable with his codefendants.

3. A letter dated November 23, 2016 from Respondent's probation officer, Vincent Daniello, states that Respondent is in compliance with the terms of his probation including the timely payment of forfeiture at the court ordered rate.

4. In a Commissioner's Order dated February 27, 2017, Respondent was summarily prohibited from practicing medicine in New York State or in any setting under the authority of Respondent's New York medical license.

VOTE OF THE COMMITTEE

The Committee unanimously sustained the charge that Respondent violated New York Educ. Law Section 6530(9)(a)(ii), for committing an act constituting a crime under federal law.

COMMITTEE DETERMINATION

The Committee unanimously sustained the specification of misconduct contained in the Statement of Charges. The Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee concluded that the appropriate penalty in this case is 18 months suspension, followed by three years probation with terms and conditions including the requirement to complete Continuing Medical Education courses and perform pro bono medical services, and a 10-year limitation on Respondent's medical license prohibiting him from ownership or incorporation of a medical facility, clinic or practice. The Committee concluded the stated penalty to be appropriate on a 3-0 vote. However, one panel member dissented only to the extent that she felt that Respondent should have one additional limitation: that he only be permitted to practice in a salaried setting.

The Committee made its penalty determination on several factors. Respondent's crime was both serious in nature and recent in time, both warranting a period of suspension and probation. Since the criminal conduct involved a medical clinic, the Committee found appropriate a license limitation that prohibits Respondent from ownership or incorporation of a medical facility, clinic or practice.

Five reference letters submitted by Respondent described him as a talented, caring physician and person. Christopher J. Cimmino, D.O., who employed Respondent prior to the

later job that led to his conviction, wrote of Respondent: "My patients loved him. They found him genuinely concerned for their welfare, eager to be a part of their life. He spent time with patients and developed a rapport, counselling where it was appropriate, medicine and referrals where it was appropriate." In a letter dated April 18, 2017, Mark Lema, M.D., Ph.D., the program director of Respondent's anesthesiology residency at the University of Buffalo, wrote, "In summary, with respect to anesthetic care of patients, Dr. Johnson has both the moral and ethical sense to do what is in the best interest of his patients. As his felony is unrelated in any way to his practice of anesthesia, I believe he merits serious reconsideration for reinstatement of his New York State medical license." The Committee also appreciated Respondent's sincere sense of remorse and repentance for his actions. Although the crime was serious, the Committee concluded that the likelihood of reoccurrence was low, and that Respondent was not a threat to the public. Based on the foregoing, the following order is issued.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. **Suspension**: Respondent's license to practice medicine in New York State is hereby suspended for a period of 18 months, beginning February 27, 2017.
3. **Probation**: Upon completion of the 18 months suspension, Respondent's medical license shall be placed on probation for a period of three years in accordance with terms set forth in Appendix "A" attached to this Determination and Order.
4. **License Limitation**: For 10 years, commencing February 27, 2017, Respondent shall be prohibited from ownership or incorporation of any medical facility, clinic or practice.
5. This Determination and Order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required by PHL 230(10)(h).

DATED: July 11, 2017


Ruth Horowitz, Ph.D., Chairperson

Rose Berkun, M.D.
Florence Kavalier, M.D.

APPENDIX A

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, Albany, 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. Respondent shall be placed on probation for a period of three years. The period of probation shall begin upon Respondent's completion of an 18-month license suspension. The 18-month license suspension shall commence on February 27, 2017. The period of probation will 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. During the three years of probation, Respondent shall complete 30 hours of Continuing Medical Education per year, as approved by the OPMC.

6. During the three years of probation, Respondent shall complete 50 hours of pro bono medical services per year, as approved by the OPMC.

7. Respondent shall comply with these Terms of Probation, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with these terms, the Director of OPMC and/or the Board for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other proceeding authorized by law, against the Respondent.

To:

Amy Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, NY 11530

Roman Johnson, M.D.



Pooja Rawal
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, NY 12237

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

IN THE MATTER
OF
ROMAN JOHNSON, M.D.

STATEMENT
OF
CHARGES

Roman Johnson, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 23, 2008, by the issuance of license number 250497 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 6, 2015, Respondent pleaded guilty to one count of Conspiracy to Commit Health Care Fraud [18 U.S.C. §§ 1349 and 1347], a felony, in the United States District Court, Eastern District of New York.

On or about May 26, 2016, Respondent was convicted and sentenced in the same court to 5 years probation, ordered to pay a court assessment of \$100.00, and criminal forfeiture of \$5,386,362.94 for which he is jointly liable with his co-defendants.

SPECIFICATION OF CHARGES

CRIMINAL CONVICTION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6350(9)(a)(ii) by having been convicted of an act constituting a crime (felony) under federal law as alleged in the facts of the following:

1. The facts as alleged in paragraph A.

DATE: February 27, 2017

Albany, New York


MICHAEL A. HISER

Deputy Counsel

Bureau of Professional Medical Conduct