



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

November 10, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael Bayer, M.D.  
180 East End Avenue  
New York, New York 10128

Michele Y. Tong, Esq.  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Law Offices of Lifshutz, Polland  
& Associates, P.C.  
Marvin L. Lifshutz, Esq. and  
Alan Lambert, M.D., Esq., of Counsel  
675 Third Avenue  
New York, New York 10017

**RE: In the Matter of Michael Bayer, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 97-277) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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., 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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
MICHAEL BAYER, M.D.**

**DETERMINATION  
AND  
ORDER  
BPMC - 97 - 277**

**DIANA E. GARNEAU, M.D., (Chair), HOWARD SIMON, M.D. and MARY PATRICIA MEAGHER**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public Health Law.

**MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer.

The Department of Health appeared by **MICHELE Y. TONG, ESQ.**, Assistant Counsel.

Respondent, **MICHAEL BAYER, M.D.**, appeared personally and was represented by the law offices of **LIFSHUTZ, POLLAND & ASSOCIATES, P.C.**, **MARVIN L. LIFSHUTZ, ESQ.** and **ALAN LAMBERT, M.D., ESQ.**, of counsel.

A Hearing was held on October 9, 1997. Evidence was received and examined, including a witness who was sworn or affirmed. A transcript of the proceeding was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

## STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§ 230 et seq. of the Public Health Law of the State of New York ["**P.H.L.**"]).

This case, brought pursuant to P.H.L. § 230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee<sup>1</sup> (Respondent).

MICHAEL BAYER, M.D., ("**Respondent**") is charged with professional misconduct within the meaning of § 6530(9)(a)(ii) of the Education Law of the State of New York ("**Education Law**"), to wit: professional misconduct ... by reason of being convicted of committing an act constituting a crime under Federal Law (Petitioner's Exhibit # 1 and §6530[9][a][ii] of the Education Law).

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has

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<sup>1</sup> P.H.L. § 230(10)(p), fifth sentence.

the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on February 1, 1967 by the issuance of license number 098180 by the New York State Education Department (Petitioner's Exhibits # 1 & # 3)<sup>2</sup>; (Respondent's Exhibit # A [identified as 090180]).

2. Respondent is currently registered to practice medicine in the State of New York (Petitioner's Exhibit # 3).

3. Richard Dombakly attempted to personally serve on Respondent a Notice of Referral Proceeding and a Statement of Charges on at least 3 separate occasions in August 1997 (Petitioner's Exhibit # 1).

4. On August 19, 1997, Michael Nemeroff mailed, by certified mail, a copy of a Notice of Referral Proceeding and a Statement of Charges to Respondent (Petitioner's Exhibit # 2).

5. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (Respondent was timely served and had no objection to the service effected); (P.H.L. § 230[10][d]); (Petitioner's Exhibits # 1 and # 2); [T-7-8]<sup>3</sup>.

6. On April 15, 1995, Respondent plead guilty, in the United States District Court, Southern District of New York ("Court") to conspiracy to defraud the Internal Revenue Service ("IRS") and to evade taxes in violation of Title 18 of the United States Code § 371 and of Title 18 of the United States Code § 7201 (Petitioner's Exhibits # 4 and # 5); (Respondent's Exhibit # B).

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<sup>2</sup> Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Dr. Bayer (Respondent's Exhibit).

<sup>3</sup> Numbers in brackets refer to Hearing transcript page numbers [T- ].

7. As a result of said plea of guilt, on September 15, 1995, Respondent was sentenced to: three (3) years of probation, the first six (6) months of which were home confinement; a fine of \$5,000.00; a special assessment of \$100.00; and as a condition of probation, the performance of 100 hours of community service, if Respondent's wife recovers from her illness during Respondent's term of probation (Petitioner's Exhibit # 5).

8. Respondent submitted character letters, mostly regarding Respondent's past monetary contributions to various cause, together with his services to some of those causes (Respondent's Exhibit # E).

9. Respondent has not filed a written answer to each (or any) of the charges and allegations contained in the Statement of Charges (P.H.L. § 230[10][p]); [T-11-46].

10. Paragraphs A and A.1 of the Factual Allegations contained in the July 29, 1997 Statement of Charges are deemed admitted by the Hearing Committee by operation of Law (P.H.L. § 230[10][p]); (See Appendix I).

11. In addition to the above factual finding, the charge of professional misconduct within the meaning of Education Law § 6530(9)(a)(ii) is deemed admitted by operation of Law (P.H.L. § 230[10][p]); (Specification of Criminal Conviction [federal]); (See Appendix I).

### **CONCLUSIONS OF LAW**

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual Allegations, from the July 29, 1997 Statement of Charges are **SUSTAINED**

The Hearing Committee concludes and determines, based on all of the evidence presented, that the SPECIFICATION OF CRIMINAL CONVICTION (Federal) is SUSTAINED.

**I Professional Misconduct under §6530(9)(a)(ii) of the Education Law.**

The Hearing Committee concludes that the Department of Health has shown, by a preponderance of the evidence, that Respondent was convicted of committing a crime under Federal Law. Respondent's conviction constitutes professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

**DETERMINATION**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be SUSPENDED for one (1) year.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. § 230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.



The record establishes that Respondent was convicted of committing crimes under Federal Law. Respondent was convicted of conspiracy to defraud the IRS and evading income taxes. The crimes occurred when Respondent, with others, willfully and knowingly agreed to create false and fraudulent deductions which were reported both as business and charitable deductions on Respondent's personal tax returns that he filed with the IRS. These deductions were taken from 1983 through 1992 with the possible exception of 1984 and 1987. In addition, (Count 2), from 1988 through 1992, Respondent filed false and fraudulent income tax returns which contained bogus charitable and business deductions which falsely understated Respondent's taxable income.

The Hearing Committee believes that Respondent has shown a lack of honesty which has manifested itself in a course of conduct over ten years. The Hearing Committee believes that Respondent's conduct was done to benefit his own personal greed.

The Hearing Committee does not believe that Respondent was a victim of circumstances, nor that Respondent did not know or participate in the tax evasion scheme, nor that Respondent was duped by someone else's deceit or manipulation. Respondent acknowledged that he knew his actions were unlawful.

The Hearing Committee believes that censure and reprimand are wholly insufficient considering the severity and time frames of the crimes committed. Monetary penalties are not appropriate since the Federal Court has already fined Respondent and the IRS has assessed, and Respondent has paid, the income taxes due with interest for a sum in excess of \$240,000.00. In addition, Respondent is subject to, and the IRS has sought, 75% in additional penalties. Limitations on Respondent's license and education or retraining are inappropriate in that there is absolutely no negative proof in the record regarding Respondent's medical ability or knowledge. As to education or retraining there is no course of education or retraining that one can take to restore moral character.

Since Respondent's actions were not medically related, the Hearing Committee did not believe that probation was appropriate or would serve any purpose. Finally, the Hearing Committee rejected the penalty of revocation because they believe that Respondent's skills and knowledge as a Board Certified Gastroenterologist and Board Certified Internist should not be wasted.

The Hearing Committee considered the mitigation submitted by Respondent to the Court as discussed in Petitioner's Exhibit # 5 and Respondent's Exhibit # B. Respondent's crimes had no connection with his patients. More importantly, Respondent's conduct had no direct or indirect effect on his patients. Respondent has admitted his criminal conduct. He has not significantly minimized his culpability or responsibility for said criminal conduct. He has indicated genuine remorse for his criminal conduct. Respondent has now paid the taxes together with interest and is subject to substantial penalties. In addition to the financial consequences previously stated, Respondent has also "paid" for his actions in terms of personal and family circumstances. Under the totality of the circumstances presented here, the Hearing Committee has chosen the penalty of actual suspension for one (1) year which is a very severe penalty but is less than the overly, unsparing and harsh penalty of revocation.

The record establishes that Respondent committed violations of Federal Laws. The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the taxpayers of the people of New York State, the Hearing Committee determines that a one year suspension of Respondent's license is the appropriate sanction to impose under the circumstances. This sanction strikes the appropriate balance between the need to fairly punish Respondent, deter future misconduct, and protect the public.

All other issues raised have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

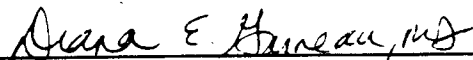
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

**ORDER**

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

1. The Specification of professional misconduct contained within the Statement of Charges (Respondent's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's **LICENSE** to practice medicine **IS SUSPENDED**, for **ONE (1) YEAR**, from the effective date of this Determination and Order

**DATED:** Albany, New York  
October 30, 1997

  
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**DIANA E. GARNEAU, M.D., (Chair),**  
**HOWARD SIMON, M.D.**  
**MARY PATRICIA MEAGHER**

TO:

Michael Bayer, M.D.  
180 East End Avenue  
New York, NY 10128

Law Offices of Lifshutz, Polland & Associates, P.C.,  
Marvin L. Lifshutz, Esq. and  
Alan Lambert, M.D., Esq., of Counsel.  
675 Third Avenue  
New York, NY 10017

Michele Y Tong, Esq.  
Assistant Counsel,  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza, 6th Floor  
New York, New York 10001

# APPENDIX I

IN THE MATTER  
OF  
MICHAEL BAYER, M.D.

STATEMENT  
OF  
CHARGES

MICHAEL BAYER, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 1, 1967, by the issuance of license number 098180 by the New York State Education Department.

### **FACTUAL ALLEGATIONS**

- A. On or about April 13, 1995, in United States District Court, Southern District of New York, Respondent pleaded guilty to conspiracy to defraud the Internal Revenue Service and to evade income taxes in violation of 18 USC 371, and tax evasion in violation of 18 USC 7201.
1. Thereafter, Respondent was sentenced to three years probation, the first six months of which were home confinement, and a fine of \$5,000.00.

### **SPECIFICATION OF CHARGES**

#### **CRIMINAL CONVICTION (Federal)**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1997) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraphs A and A1.

DATED: July 29, 1997  
New York, New York

A handwritten signature in black ink, appearing to read "R. Nemerson", written over a horizontal line.

ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct