



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

December 4, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Hedley Building-4th Floor
433 River Street
Troy, New York 12180

Robert S. Asher, Esq.
295 Madison Avenue
New York, New York 10017

Joseph Fanfan, Jr., M.D.
3006 E. Merion
Weston, Florida 33332

Joseph Fanfan, Jr., M.D.
300 W. Sunrise Blvd., Suite 8
Fort Lauderdale, Florida 33311

RE: In the Matter of Joseph Fanfan, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-368) 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), 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.

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.

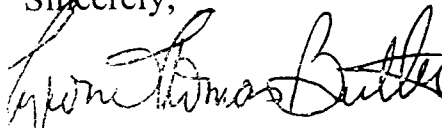
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

IN THE MATTER
OF
JOSEPH FANFAN, JR., M.D.

DETERMINATION
AND
ORDER

BPMC #02-368

A hearing was held on November 20, 2002, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated September 25, 2002, were served upon the Respondent, **Joseph Fanfan, Jr., M.D.** **John W. Choate, M.D.**, Chairperson, **Theresa S. Briggs, M.D., Ph.D.**, and **Ms. Virginia R. Marty**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared and was represented by **Robert S. Asher, Esq.**, 295 Madison Avenue, New York, New York 10017.

Evidence was received 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 when a licensee is charged solely 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 the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(ii). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Ketlyne Fanfan
Joseph Fanfan, Jr., 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." 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. Joseph Fanfan, Jr., M.D., the Respondent, was authorized to practice medicine in New York State on October 29, 1982, by the issuance of license number 152295 by the New York State Education Department (Petitioner's Ex. 4).

2. On July 17, 2002, in the United States District Court, Southern District of Florida, the Respondent was found guilty, based on a plea of guilty, of four counts of Failure to File Federal Income Tax Returns for the years 1994, 1995, 1996 and 1997, in violation of 26 U.S.C. Section 7203. The Respondent was sentenced to five years probation for each count, to run concurrently, six months of confinement, a \$100.00 assessment and \$179,168.00 in restitution. (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Respondent was convicted in the United States District Court for the Southern District of Florida of failing to file Federal income tax returns for 1994, 1995, 1996 and 1997. At the hearing, the Respondent admitted his guilt, but through his testimony, his wife's testimony, and two exhibits, attempted to convince the Hearing Committee that there were mitigating circumstances justifying a minor penalty in this case.

The Respondent's position is that he never was motivated by a desire to evade his responsibility to pay his income tax, but, instead, was frustrated in his attempt to do so by Florida Medical Management Consultants ("FMMC"), a company that he had hired in 1993 to manage the business and financial aspects of his private medical practice.

According to the Respondent, FMMC was supposed to prepare his tax returns for him, but did not do so. The Respondent's evidence is that, because FMMC was in possession of all financial records of the private medical practice, the Respondent was unable to prepare the tax returns himself. The Respondent and his wife testified that there were repeated attempts by them to have FMMC file the tax returns, but that FMMC would not cooperate. Finally, in 1998, the Respondent hired an attorney, Martin Press, Esq., to solve the Respondent's problems with FMMC and with the Internal Revenue Service, which had inquired about the missing tax returns. Mr. Press decided that although the 1998 income tax return should be filed on time, the overdue returns for 1994 through 1997 should not be filed until Mr. Press worked out a settlement with the Internal Revenue Service, the reason being that he feared that filing these returns prior to a settlement with the Internal Revenue Service could lead to a charge of filing false tax returns (Respondent's Ex. B, p. 4). This situation eventually led to an Indictment against the Respondent and the conviction that is the subject of this hearing.

The Respondent's evidence is sufficient to prove that the failure to file the income tax returns was not the result of a scheme to avoid paying taxes. The problem was not caused by intent to cheat the Internal Revenue Service. However, the Respondent does deserve blame for the inadequacy of his response to the problem caused by FMMC. He waited until 1998 to hire an attorney to assist him with the problem. He should have acted years earlier to obtain legal assistance. An attorney could have gone to court to force FMMC to turn over the Respondent's financial records, thus enabling the Respondent to file his tax returns. The Respondent, a native of Haiti, testified that he did not seek legal assistance earlier because suing people is inconsistent with his cultural background. The Hearing Committee was skeptical of this explanation.

The Respondent must have known his approximate income during the years in question and, therefore, could have paid estimated taxes for those years in a timely manner. The Respondent, however, did not do this. Failing this, the Respondent could have set aside money to pay the tax bill that he knew would eventually come. He did not do this either. Because of this failing, the Respondent did not have sufficient funds upon conviction to pay the overdue taxes in full.

The Petitioner recommended a revocation of the Respondent's license to practice medicine as the best penalty for this case. The Hearing Committee, because it does not believe that the Respondent's crime was the result of a scheme to evade the payment of income taxes, will not impose such a harsh penalty. However, the Respondent's negligent and irresponsible response to the problem initially caused by FMMC requires the substantial penalty imposed by the Order, below.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is suspended for five years. If, during the period of suspension, the Respondent completes the payment of restitution required by the sentence imposed by the United States District Court for the Southern District of Florida, the balance of the license suspension will be stayed upon the Respondent's submission of proof of such final payment to the Petitioner's Office of Professional Medical Conduct (New York State Department of Health, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Troy, New York 12180) or upon the passage of one year from the effective date of this Order, whichever is later.

2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Austerlitz, New York
December 1, 2002



John W. Choate, M.D.
Chairperson

Theresa S. Briggs, M.D., Ph.D.
Virginia R. Marty

APPENDIX I

1
Dr. EV 11/20/02STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

JOSEPH FANFAN, JR., M.D.
CO-02-04-1621-A

NOTICE OF
REFERRAL
PROCEEDING

TO: JOSEPH FANFAN, JR., M.D.
3006 E. Merion
Weston, FL 33332

JOSEPH FANFAN, JR., M.D.
300 W. Sunrise Blvd., Suite 8
Fort Lauderdale, FL 33311

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 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 25th day of October 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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. You may produce evidence or sworn testimony on your behalf. Such evidence 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 15, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before October 15, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

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 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

Sept. 25, 2002



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
JOSEPH FANFAN, JR., M.D.
CO-02-04-1621-A

STATEMENT
OF
CHARGES

JOSEPH FANFAN, JR., M.D., the Respondent, was authorized to practice medicine in New York state on October 29, 1982, by the issuance of license number 152295 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 17, 2002, in the United States District Court, Southern District of Florida, Respondent was found guilty, based on a plea of guilty, of four (4) counts of Failure to File Federal Income Tax Returns for the years 1994, 1995, 1996, and 1997, in violation of 26 U.S.C. §7203 and was sentenced to five (5) years probation, each, for counts 1, 2, 3 and 4, to run concurrently, to include six (6) months of confinement, as an alternative to imprisonment, consisting of one (1) month home detention with electronic monitoring followed by five (5) months of community confinement, and to pay a \$100.00 assessment and \$179,168.00 restitution.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: *Sept. 25*, 2002
Albany, New York

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