



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

November 1, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen Davis, M.D.
Redacted Address

Stephen Davis, M.D.
585 Schenectady Avenue
Brooklyn, New York 11203

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

RE: In the Matter of Stephen Davis, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-237) 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
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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

Redated Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
STEPHEN DAVIS, M.D.

DETERMINATION
AND
ORDER
BPMC #07-237

A hearing was held on October 17, 2007, 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 August 9, 2007, were served upon the Respondent, **Stephen Davis, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Donald Cherr, M.D.**, Chairperson, **Gregory Fried, M.D.**, and **Mr. Robert M. Briber**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and represented himself.

Evidence was received and transcripts of these proceedings were made.

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

BACKGROUND

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)(i). 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:

Stephen Davis, 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. Stephen Davis, M.D., the Respondent, was authorized to practice medicine in New York State on July 16, 1982, by the issuance of license number 150869 by the New York State Education Department (Petitioner's Ex. 4).

2. On November 22, 2005, in the Criminal Court of the City of New York, the Respondent was found guilty, based on a plea of guilty, of Falsifying Business Records in the Second Degree, in violation of New York State Penal Law Section 175.05, a class A

misdemeanor. On June 7, 2006, the Respondent was sentenced to imprisonment of time served. (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

In November of 2005, the Respondent was convicted of Falsifying Business Records in the Second Degree. The Appellant testified that this conviction was based on events that occurred when he was employed at Aesthetic Concepts Laser Surgical Center in New York City. One of the owners of this business was Mr. Jose A. Lopez. The Respondent testified that Mr. Lopez claimed to be a physician licensed to practice medicine in New York State at that time, but that this was not true. The Respondent testified that he unwittingly enabled and assisted Mr. Lopez to practice without a license and that this led to his arrest and conviction. He testified that he pled guilty because his attorney told him that he needed to do so, not because he knowingly did anything wrong while working at Aesthetic Concepts Laser Surgical Center.

The Respondent's argument must be disregarded. Public Health Law Section 230(10)(p) requires that this Hearing Committee limit the scope of this hearing to a determination of the penalty to be imposed; relitigating whether the Respondent committed the crime of which he was convicted is precluded by this statute. In other words, we must accept as true the allegation that the Respondent committed the crime that is the subject of this hearing. The crime at issue, Falsifying Business Records in the Second Degree, is not committed when someone carelessly, accidentally or innocently

makes a false entry in a business record. For the crime to be committed, Penal Law Section 175.05 specifies that there be "intent to defraud." Therefore, when the Respondent testified that he did not knowingly do anything wrong, he was, in effect, claiming that he did not have an intent to defraud. Such denial of intent to defraud is a denial of the commission of this crime. As stated above, such denial must be disregarded.

The Respondent, aside from his testimony about not knowingly doing anything wrong, introduced very little evidence. He testified to, and introduced several exhibits in support of, a claim that he cooperated with prosecutors in their investigation of Mr. Lopez. However, this cooperation did not begin until after the Respondent had been arrested. He helped the prosecutors with their investigation of Mr. Lopez in order to increase his own chances for a lenient sentence. His cooperation was an act of self-interest, not an act of virtue.

The Petitioner recommended that the Respondent's license to practice medicine in New York State be revoked. The Respondent argued that this penalty was too harsh. This Hearing Committee accepts the Petitioner's recommendation on this issue. There are three reasons for our position. One is that the Respondent denied his guilt and refused to accept responsibility for his criminal behavior. The second reason is that the Respondent provided virtually no evidence upon which it could be concluded that he would not repeat his criminal conduct if given the opportunity. Almost all of his evidence was a denial of guilt rather than proof that he could be trusted to continue practicing medicine despite the criminal behavior. The third reason is that the criminal behavior was serious. As stated in the Plea Agreement that is part of Petitioner's Ex. 5:

On numerous occasions...Davis fraudulently omitted information in patient medical records to falsely indicate that Davis was the treating physician, when in fact, Jose A. Lopez was the individual who had diagnosed, treated,

operated on, and prescribed for some of these patients. In some instances, Davis was not present during the treatment of patients, yet he completed and signed medical records for these patients based on information provided to him by Jose A. Lopez.

Enabling a person without a New York State medical license to practice medicine in New York State is a seriously dangerous breach of the Respondent's responsibilities as a physician. It placed at risk the health of the patients treated by Mr. Lopez. The Respondent's license to practice medicine should be revoked for such irresponsible behavior.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Rochester, New York
30 October, 2007

Redacted Signature

Donald Cherr, M.D.
Chairperson

Gregory Fried, M.D.
Robert M. Briber

APPENDIX I

EV 10/17/07 SW

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**IN THE MATTER****OF****STEPHEN DAVIS, M.D.
CO-07-04-1988-A****NOTICE OF****REFERRAL****PROCEEDING****TO: STEPHEN DAVIS, M.D.**

Redacted Address

**STEPHEN DAVIS, M.D.
585 Schenectady Avenue
Brooklyn, NY 11203****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 19th day of September, 2007, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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. 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 which 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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, 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 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 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

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

Aug. 9, 2007

Redacted Signature

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
STEPHEN DAVIS, M.D.
CO-07-04-1988-A

STATEMENT
OF
CHARGES

STEPHEN DAVIS, M.D., Respondent, was authorized to practice medicine in New York state on July 16, 1982, by the issuance of license number 150869 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about November 22, 2005, in the Criminal Court of the City of New York, County of New York, New York, Respondent was found guilty, based on a plea of guilty, of Falsifying business records in the second degree, in violation of New York State Penal Law, §175.05, a class A misdemeanor, and on or about June 7, 2006, was sentenced to imprisonment of time served.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: *Aug. 9*, 2007
Albany, New York

Redated Signature

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