



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Public

Wendy E. Saunders
Chief of Staff

May 8, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eric C. Tucker, M.D.
Redacted Signature

Robert Bogan, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Eric C. Tucker, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-83) 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,

Redacted 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

IN THE MATTER
OF
ERIC C. TUCKER, M.D.

DETERMINATION
AND
ORDER

BPMC #09-83

COPY

A hearing was held on April 23, 2009, 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 January 28, 2009, were served upon the Respondent, **ERIC C. TUCKER, M.D.** An Amended Statement of Charges, dated February 25, 2009, was served on Respondent on February 26, 2009.

Pursuant to Section 230(10)(e) of the Public Health Law, **Peter Kane, M.D., Chair, Arsenio Agopovich, M.D.,** and, **Antoinette Myers, RN., COHN-S, CCM,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, 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, **Eric C. Tucker, M.D.,** did not appear, although duly served. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

2. **Eric C. Tucker, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 13, 2005, by the issuance of license number 238049 by the New York State Education Department (Petitioner's Ex. 6).
3. On or about March 14, 2000, the Respondent was charged with Fraud and Conspiracy to Commit Fraud in Ontario, Canada. On August 27, 2004, the Respondent was indicted for these charges in Ontario and these charges were pending until November of 2005. (Petitioner's Ex. 7)
4. In his New York license application, in 2004, dated June 2, 2004, the Respondent answered "no" to question 11, "are any criminal charges pending against you in any court?" (Petitioner's Ex. 6)
5. On or about January 27, 2005 the Discipline Board of Physicians in Ontario, Canada, charged the Respondent with professional misconduct due to incompetency. (Petitioner's Ex. 8)
6. On June 20, 2007, the Respondent resigned from the College of Physicians and Surgeons of Ontario and agreed never to apply or re-apply for registration as a physician or for a license to practice medicine in Ontario. (Petitioner's Ex. 9)
7. On May 18, 2007, the Respondent submitted a registration renewal application to the New York Education Department in which he falsely stated that no charges were pending against him in any jurisdiction for professional misconduct. (Petitioner's Ex. 6 and 7).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(1) by obtaining his license fraudulently in that he falsely answered a question on his New York license application about a prior criminal charge in that criminal charges were pending against him in Ontario.

VOTE: Sustained (3-0)

SECOND AND THIRD SPECIFICATIONS

Respondent violated New York Education Law §6530(2), by practicing the profession fraudulently in that he falsely answered a question on his New York license application about a prior criminal charge in that criminal charges were pending against him in Ontario.

VOTE: Sustained (3-0)

THIRD AND FOURTH SPECIFICATIONS

Respondent violated New York Education Law §6530(21), by willfully making or filing a false report required by law or by the department of health or the education department in that he falsely answered "no" in May of 2007 about pending misconduct charges when the Discipline Board of Physicians in Ontario had charged the Respondent with professional misconduct due to incompetency in January of 2005 and that these charges were still pending in May of 2007.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence.

It is noted that substituted service was used and that the papers were left with his wife and son, at his home, according to the affidavit of service. (Petitioner's Exhibit 2). The Respondent was, it should be noted, fully aware of this proceeding as he responded to the charges with a detailed 11 page answer in papers submitted to Mr. Bogan which, at the Respondent's request, were submitted at the hearing and made part of the record herein. In addition, the Respondent's papers make reference to a phone call he had with Mr. Bogan on April 14, 2009. (See Respondent's Exhibit # A)

Respondent was, among other things, charged with two specifications of the fraudulent practice of medicine, violation of N.Y. Education Law §6530 (1) and (2). The intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine, constitutes the fraudulent practice of medicine. Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3rd Dept. 1991), citing Brestin v. Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (3rd Dept. 1986). In order to sustain a charge that a licensee was engaged in the fraudulent practice of medicine, the hearing committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3rd Dept. 1966), aff'd 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). The licensee's knowledge and intent may properly be inferred from facts found by the hearing committee, but the committee must specifically state the inferences it is drawing regarding knowledge and intent. Choudhry, at 894 citing Brestin.

The panel, in concluding that the Respondent intentionally misled the New York board on his application, looked to his license renewal application, dated May 18, 2007, wherein, at #1 d, the Respondent clearly answered "no" to the question of whether

charges were pending against him in any jurisdiction for any sort of professional misconduct. His reapplication is set forth in the record at Department's Exhibit # 6. In his responsive papers, Respondent's Exhibit # A, the Respondent states that he answered "no" on this reapplication because he thought the charges were "thrown out."

The documents in the record from the Ontario College of Physicians and Surgeons, Exhibit # 9, show that these charges were not thrown out but were, in fact sustained. The Canadian documents establish that, on June 20, 2007, the Respondent entered into an undertaking with the College not to apply or re-apply for registration as a physician in Ontario. Based on this documentation and the Respondent's own answering papers, the panel found that he intentionally misled the New York board on his re-application. The record is clearly showing that the Respondent resigned from the College of Physicians and Surgeons of Ontario and agreed never to apply or re-apply for registration as a physician of for a license to practice medicine in Ontario. Thus he was less than honest in answering the re-application questions.

Similarly, the record shows that the Respondent committed the same deception when he initially applied for his New York license back in 2004. On this application, dated June 2, 2004, the Respondent answered "no" to question 11, "are any criminal charges pending against you in any court?"

The documentation from the Assistant Crown Attorney in Canada, Exhibit # 7 in the record, establishes that the Respondent was charged with conspiracy in Ontario in the year 2000 and that these charges were not dealt with until 2005. In his responsive papers the Respondent admits that he was wrong when he had thought these charges were "thrown out." He goes on to say that they were eventually thrown out. The panel found that he was clearly misrepresenting the facts as they then existed on his 2004 application and was, in his answering papers, continuing the deception.

In addition, the panel found that the Respondent was dishonest in his initial application and subsequent reapplications for his New York Medical license and thus sustained all the charges herein. The panel noted that that the Respondent was aware of this proceeding. As to the penalty, the Hearing Committee considered the full range of available penalties and determined that the people of New York State would be protected by a revocation of the Respondent's license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The FIRST, SECOND, THIRD and FOURTH Specifications contained in the Amended Statement of Charges (Department's Exhibit # 4) are SUSTAINED; and
2. The license of the Respondent to practice medicine in New York State is REVOKED; and
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10) (h).

**DATED: Cazenovia, New York
May 2, 2009**

Redacted Signature

~~Peter Kane, M.D., Chair~~

**Arsenio Agopovich, M.D.
Antoinette Myers, RN, COHN-S, CCM**

To:

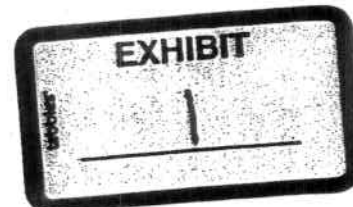
Eric C. Tucker, M.D.

Redacted Address

Robert Bogan, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

APPENDIX 1

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



IN THE MATTER
OF
ERIC C. TUCKER, M.D.
CO-06-07-4054-A

NOTICE
OF
HEARING

TO: ERIC C. TUCKER, M.D.
Redacted Address

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on March 17, 2009, 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 , and at such other adjourned dates, times, and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A Summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of actual engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of New York Public Health Law §230(10)(c), 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. 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 demands, hereby, 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 that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department Attorney: Initial here MS

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
January 28, 2009

Redacted Signature

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

Inquiries should be directed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, NY 12180
(518) 402-01828

These charges are only allegations which may be contested by the licensee in an administrative hearing.

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

IN THE MATTER
OF
ERIC C. TUCKER, M.D.
CO-06-07-4054-A

STATEMENT
OF
CHARGES

ERIC C. TUCKER, M.D., Respondent, was authorized to practice medicine in New York state on October 13, 2005, by the issuance of license number 238049 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 14, 2000, Respondent was charged and on or about August 27, 2004, indicted, in the Regional Municipality of Peel, Ontario, Canada, with Fraud and Conspiracy to Commit Fraud, criminal offenses, which remained active throughout the years up to and including November 2005.

B. On or about June 2, 2004, and/or on or about October 26, 2004, Respondent prepared and submitted to the New York State, Education Department, an Application for Licensure and First Registration, wherein he falsely answered "No" to question "11. Are criminal charges pending against you in any court."

C. On or about May 14, 2005, the Discipline Committee of the College of Physicians and Surgeons of Ontario (hereinafter "Ontario Board"), charged Respondent with professional misconduct "in that he has failed to meet the standard of the profession" and that he "is incompetent...in that his care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of his patients of a nature or to an extent that demonstrates that he is unfit to continue practice or that his practice should be restricted."

D. On or about May 18, 2007, Respondent prepared and/or submitted to the New York State, Education Department, a Registration Renewal Document, wherein he falsely answered "No" to question "2. Since your last registration application, has any licensing or disciplinary authority revoked, annulled, cancelled, accepted surrender of, suspended, placed

on probation, or refused to issue or renew a professional license or certificate held by you now or previously, or fined, censured, reprimanded or otherwise disciplined you?"

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.
2. The facts in Paragraphs C and/or D.

THIRD AND FOURTH SPECIFICATIONS

Respondent violated New York Education Law §6530(21) by willfully making or filing a false report required by law or by the department of health or the education department, in that Petitioner charges:

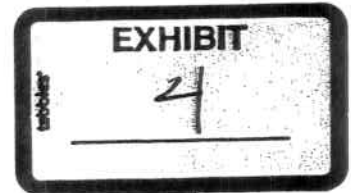
3. The facts in Paragraphs A and/or B.
4. The facts in Paragraphs C and/or D.

DATED: *January 28*, 2009
Albany, New York

Redacted Signature

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

These charges are only allegations which may be contested by the licensee in an administrative hearing.



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

IN THE MATTER
OF
ERIC C. TUCKER, M.D.
CO-06-07-4054-A

AMENDED
STATEMENT
OF
CHARGES

ERIC C. TUCKER, M.D., Respondent, was authorized to practice medicine in New York state on October 13, 2005, by the issuance of license number 238049 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 14, 2000, Respondent was charged and on or about August 27, 2004, indicted, in the Regional Municipality of Peel, Ontario, Canada, with Fraud and Conspiracy to Commit Fraud, criminal offenses, which remained active throughout the years up to and including November 2005.

B. On or about June 2, 2004, and/or on or about October 26, 2004, Respondent prepared and submitted to the New York State, Education Department, an Application for Licensure and First Registration, wherein he falsely answered "No" to question "11. Are criminal charges pending against you in any court?"

C. On or about January 27, 2005, and/or on or about May 4, 2005, the Discipline Committee of the College of Physicians and Surgeons of Ontario (hereinafter "Ontario Board"), charged Respondent with professional misconduct "in that he has failed to meet the standard of the profession" and that he "is incompetent...in that his care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of his patients of a nature or to an extent that demonstrates that he is unfit to continue practice or that his practice should be restricted, such charges remaining active until on or about June 20, 2007, when Respondent resigned from the College of Physicians and Surgeons of Ontario and agreed never to apply or re-apply for registration as a physician or for a license to practice medicine in Ontario."

D. On or about May 18, 2007, Respondent prepared and/or submitted to the New York State, Education Department, a Registration Renewal Document, wherein he falsely answered "No" to question "2.d. Are charges pending against you in any jurisdiction for any sort of professional misconduct?"

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(1) by obtaining the license fraudulently, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND AND THIRD SPECIFICATIONS

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.
3. The facts in Paragraphs C and/or D.

THIRD AND FOURTH SPECIFICATIONS

Respondent violated New York Education Law §6530(21) by willfully making or filing a false report required by law or by the department of health or the education department, in that Petitioner charges:

4. The facts in Paragraphs A and/or B.
5. The facts in Paragraphs C and/or D.

DATED: *February 25*, 2009
Albany, New York

Redacted Signature

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