

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

IN THE MATTER
OF
HERBERT GASTON, M.D.
RO-06-12-7031-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: HERBERT GASTON, M.D.
Redacted Address

HERBERT GASTON, M.D.
Surgical Associates
418 North Main Street
Penn Yan, NY 14527

The undersigned, Richard F. Daines, M.D., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that **HERBERT GASTON, M.D.**, Respondent, licensed to practice medicine in the State of New York on February 22, 1990, by license number 181520, has been convicted of committing an act constituting a felony under federal law, as is more fully set forth in the Statement of Charges attached, hereto, and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), effective immediately **HERBERT GASTON, M.D.**, Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law §230(12).

**ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN
DEFAIANCE OF THIS COMMISSIONER'S ORDER SHALL
CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE
MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY
CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY,
DEFINED BY NEW YORK EDUCATION LAW §6512.**

PLEASE TAKE NOTICE that 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 the 15th day of May 2008, at 10:00 a.m., at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

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. Respondent shall appear in person at the hearing and may be represented by counsel. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing 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, and by 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. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

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 or sanction 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 FORTH 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

3/28 /,2008

Redacted Signature
RICHARD F. DAINES, M.D.
Commissioner of Health

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STATEMENT
OF
CHARGES

HERBERT GASTON, M.D., Respondent, was authorized to practice medicine in New York state on February 22, 1990, by the issuance of license number 181520 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 7, 2008, in the United States District Court, Western District of New York, Respondent was found guilty, based on a plea of guilty, of one (1) count of destruction, alteration, or falsification of records in Federal investigations, in violation of Title 18, United States Code, §1519, a felony, and was sentenced, inter alia, to six (6) months imprisonment, two (2) years supervised release upon release from imprisonment, a \$100.00 assessment, and a \$2,000.00 fine.

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: *March 26*, 2008
Albany, New York

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

Inquires should be addressed to:

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