



Public
**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

December 31, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Martin D. Jacobs, M.D.

Redacted Address

Robert Bogan, Esq.
NYS Department of Health
433 River Street - Suite 303
Troy, New York 12180-2299

RE: In the Matter of Martin D. Jacobs, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-232) 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

COPY

IN THE MATTER

OF

MARTIN D. JACOBS, M.D.

DETERMINATION

AND

ORDER

BPMC #09-232

A hearing was held on December 16, 2009, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding, dated July 27, 2009, and a Statement of Charges, dated July 29, 2009, were served upon the Respondent, **Martin D. Jacobs, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **John B. Waldman, M.D.**, Chairperson, **Eleanor C. Kane, M.D.**, and **Thomas W. King, Jr., M.P.A., P.E.**, 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 at the hearing 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)(ii), 6530(9)(b), and 6530(9)(d). 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:

Martin D. Jacobs, 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. Martin D. Jacobs, M.D., the Respondent, was authorized to practice medicine in New York State on February 25, 1977, by the issuance of license number 130007 by the New York State Education Department (Petitioner's Ex. 4).

2. On December 14, 2007, in the United States District Court, Western District of Pennsylvania, the Respondent was found guilty of Income Tax Evasion, in violation of 26 USC Section 7201, a felony, and was sentenced to twenty-four months imprisonment,

three years supervised release upon release from prison, a \$100.00 Assessment, a \$5000.00 fine, and payment of any back taxes, penalties and interest. (Petitioner's Ex. 5 and 6).

3. On or about October 3, 2008, the Pennsylvania Department of State, State Board of Medicine ("Pennsylvania Board"), by a Consent Agreement and Order ("Pennsylvania Order"), indefinitely suspended the Respondent's license to practice medicine for a minimum of two years retroactive to February 20, 2008, the date of the Respondent's incarceration, based on his criminal conviction (Petitioner's Ex. 6).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to New York Education Law Section 6530(9)(ii) - "Being convicted of committing an act constituting a crime under...federal law..."

VOTE OF THE HEARING COMMITTEE

FIRST 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)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

THIRD SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine suspended and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York State..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted of Income Tax Evasion, a felony, for failure to pay any federal income tax on his 2001 income, despite the fact that he had "substantial taxable income" that year (Petitioner's Ex. 6). As stated in Count Three of the Indictment, the Respondent evaded paying his income tax:

...by submitting documents to the Internal Revenue Service stating that his taxable income and tax due and owing thereon were 0; by utilizing bank accounts with another individual's social security number; by making false statements to representatives of the Internal Revenue Service; by purchasing and holding cashier's checks to conceal his assets from the Internal Revenue Service; and by concealing and attempting to conceal his ownership of other assets. (Petitioner's Ex. 6).

The Respondent committed a serious crime that was perpetrated by the employment of several dishonest acts. The Petitioner recommended revocation of the Respondent's license to practice medicine and the Respondent gave several reasons for not imposing a revocation.

The Respondent noted that in the two other States where he is licensed, Montana and Pennsylvania, his license to practice was only suspended. The Respondent stated that New York State should do the same. This argument is unpersuasive. The members of this Hearing Committee are obligated to exercise our independent judgment to choose a penalty that adequately protects the people of New York State. We are not obligated to

adopt a penalty simply because the disciplinary body of another State has imposed that penalty.

The Respondent contended that he should be given credit because he cooperated with all investigating authorities. This argument is rejected. Once the Respondent was caught, it was in his best interest to cooperate with authorities in the hopes of receiving a beneficial plea agreement. The Respondent was acting out of self-interest and will not receive a lesser penalty because of his cooperation with authorities.

The Respondent argued that people can be rehabilitated and that this is what he is trying to do. The problem with this argument is that the Respondent testified to nothing convincing that leads this Hearing Committee to the conclusion that the effort will be successful. He expressed no remorse or shame for his crime. The Respondent has served his term in prison, but has not demonstrated that the experience made him a more honest person.

The Respondent contended that his license should not be revoked because his crime did not involve the practice of medicine and because no patient was harmed. This is not a convincing argument. The penalty of revocation is not limited to problems with a physician's medical care. It can also be employed in serious cases of criminal behavior. The integrity and the reputation of the medical profession would be harmed if the Respondent and those like him were allowed to continue practicing medicine. The Respondent has proved himself to be an extremely dishonest person, a person who cannot be trusted. He should have his license to practice revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent, Martin D. Jacobs, M.D., 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: Albany, New York

December 30, 2009

Redacted Signature

John B. Waldman, M.D.
Chairperson

Eleanor C. Kane, M.D.
Thomas W. King, Jr., M.P.A., P.E.

APPENDIX I

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



IN THE MATTER
OF
MARTIN D. JACOBS, M.D.
CO-08-11-7291-A

NOTICE OF
REFERRAL
PROCEEDING

TO: MARTIN D. JACOBS, M.D.

Redacted Address

MARTIN D. JACOBS, M.D.

Redacted Address

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 23rd day of September, 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.

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 who shall be an attorney admitted to practice in New York state. 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.

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

Department attorney: Initial here _____

Redacted Signature

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

July 27, 2009

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
MARTIN D. JACOBS, M.D.
CO-08-11-7291-A

STATEMENT
OF
CHARGES

MARTIN D. JACOBS, M.D., Respondent, was authorized to practice medicine in New York state on February 25, 1977, by the issuance of license number 130007 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 14, 2007, in the United States District Court, Western District of Pennsylvania, Respondent was found guilty, based on a plea of guilty, of Income Tax Evasion, in violation of 26 USC §7201, a felony, and was sentenced to twenty four (24) months imprisonment, three (3) years supervised release upon release from imprisonment, a \$100.00 Assessment, a \$5,000.00 Fine, and that he pay any back taxes, penalties, and interest.

B. On or about October 3, 2008, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine (hereinafter "Pennsylvania Board"), by a Consent Agreement and Order (hereinafter "Pennsylvania Order"), inter alia, INDEFINITELY SUSPENDED Respondent's license to practice medicine for a minimum of two (2) years retroactive to February 20, 2008, the date of Respondent's incarceration, based on the criminal conviction set forth in Paragraph A, above.

C. The conduct resulting in the Pennsylvania Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law 6530(9)(a)(ii) (being convicted of committing an act constituting a crime under federal law.

SPECIFICATIONS
FIRST 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.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

DATED: *July 29*, 2009
Albany, New York

Redacted Signature

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