



**Department
of Health**

Public

ANDREW M. CUONIO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 16, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frank M. Lobacz, D.O. #720068-053
FCI Butner Low Federal Correctional Institution
P.O. Box 999
Butner, North Carolina 27509

John F. Kaley, Esq.
Doar, Rieck, Kaley & Mack
Astor Building
217 Broadway
New York, New York 10007

Nathaniel White, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Frank M. Lobacz, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-319) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway - Suite 510
Albany, New York 12204

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,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
FRANK M. LOBACZ, D.O.

DETERMINATION
AND
ORDER
BPMC #14-319

COPY

A hearing was held on December 11, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order, a Notice of Referral Proceeding and a Statement of Charges, dated December 27, 2013, were served upon the Respondent, Frank M. Lobacz, D.O.

Pursuant to Section 230(10)(e) of the Public Health Law, Mohammad-Reza Ghazi-Moghadam, M.D., Chair, Trevor A. Litchmore, M.D. and Dennis P. Zimmerman, M.S., CRC, 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 James E. Dering, Esq., General Counsel, by Nathaniel White, Esq., of Counsel. The Respondent, Frank M. Lobacz, D.O., did appear by video conference and was represented by counsel, John F. Kaley, Esq. of the firm of Doar, Rieck, Kaley & Mack of New York City. 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 §6530(9) (a)(ii) by having been convicted of committing an act constituting a crime under federal law, Health Care Fraud, a felony, in violation of Title 18 U.S.C. §§ 1347 and 1349 and other crimes. As a result of this conviction, the New York Commissioner of Health summarily suspended the Respondent's New York medical license on December 27, 2013.

Copies of the Commissioner's Order, 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:

Frank M. Lobacz, D.O.

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. Frank M. Lobacz, D.O., the Respondent, did appear at the hearing via video conference, and was duly and personally served with process. (Petitioner's Ex. 2)
2. Frank M. Lobacz, D.O., the Respondent, was authorized to practice medicine in New York State on July 12, 1974, by the issuance of license number 120717 by the New York State Education Department. (Petitioner's Ex. 3)
3. On or about November 12, 2010 in the United States District Court, Eastern District of New York, Respondent was found guilty of Conspiracy to Commit Health Care Fraud in violation of 18 United States Code (USC) § 1347 and 1349, Health Care Fraud in violation of 18 USC § 1347, Filing a False Annual Report of Employee Benefit Plan in violation of 26 USC § 7206(1) and three counts of Income Tax Evasion in violation of 26 USC § 7201, all felonies. (Petitioner's Ex. 4)
4. On July 17, 2013, Respondent was sentenced for the above crimes to sixty-five months imprisonment and three years of supervised release. The Respondent was also required to pay restitution of \$3,613,935.03, a fine of \$17,500, and a \$600 assessment fee. (Petitioner's Ex. 4)

3. Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing acts constituting crimes under federal law, to wit, the above felonies of Health Care Fraud, Filing False Annual Reports, and Income Tax Evasion. (Petitioner's Ex. 4)

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 Respondent did appear at the hearing by video conference from the Federal Prison where he is incarcerated. The Respondent's attorney made his appearance by telephone from his New York office, but had to leave the hearing early to attend to another matter in Federal Court. To accommodate this attorney the Administrative Officer allowed him to make his statement to panel out of order. There was no dispute about jurisdiction.

There was also no dispute about the basic fact in this case. The record herein shows that the Respondent was found guilty of Conspiracy to Commit Health Care Fraud in violation of 18 United States Code (USC) § 1347 and 1349, Health Care Fraud in violation of 18 USC § 1347, Filing a False Annual Report of Employee Benefit Plan in violation of 26 USC § 7206(1) and three counts of Income Tax Evasion in violation of 26 USC § 7201, all

felonies. The record goes on to show that the Respondent was sentenced for these crimes to sixty-five months imprisonment and three years of supervised release. The Respondent was also required to pay a restitution of \$3,613,935.03, a \$17,500 fine, and a \$600 assessment fee. At the time of the hearing, the Respondent was still incarcerated at the Butner Low Federal Correctional Institution in North Carolina.

At the hearing, the Respondent argued that he was innocent of the above crimes and stated that he fully expected to prevail on appeal. This appeal, according to the Respondent, is still pending in the Federal Courts. The panel did not accept this argument. Conviction of a federal crime is medical misconduct under New York law. It was explained to the Respondent that if he should prevail on his appeal the decision of Medical Board could be annulled. However, for the present, the conviction stands as a fact and thus the panel sustained the charge against the Respondent.

The Department's attorney, Mr. White, stated that, given the nature of the felony conviction in this case, there is no other appropriate outcome in New York State but to revoke the Respondent's New York license. The panel, unanimously, agreed with the Department on this recommendation. As to the penalty, therefore, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license. Accordingly, the panel decided, unanimously, to revoke the Respondent's license under the circumstances of this case.

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: Amsterdam, New York
January 16, 2015

Mohammad-Reza Ghazi-Moghadam, M.D., Chair

Trevor A. Litchmore, M.D.
Dennis P. Zimmerman, M.S., CRC

To:

Frank M. Lobacz, D.O. - #720085-083
FCI Butner Low Federal Correctional Institution
P.O. Box 888
Butner, NC 27508

John F. Kaley, Esq.
Doar, Rieck, Kaley & Meck
Astor Building
217 Broadway
New York, NY 10007

Nathaniel White, Esq.
Attorney for Petitioner
Associate Attorney
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2812
Albany, New York 12237

APPENDIX 1

IN THE MATTER
OF
FRANK M. LOBACZ, D.O.
CO-13-07-3723-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: Frank M. Lobacz, #72068-053
FCI Butner Low Federal Correctional Institution
PO Box 999
Butner, NC 27509

The undersigned, Sue Kelly, Executive Deputy 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 FRANK M. LOBACZ, D.O., Respondent, licensed to practice medicine in the State of New York on July 12, 1974, by license number 120717, has been convicted of committing an act constituting a felony under Federal law, in the United States District Court, Eastern District of New York, 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 FRANK M. LOBACZ, D.O., 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.

ANY PRACTICE AS A PHYSICIAN IN VIOLATION 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 a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. 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 February 19, 2013, at 10:30 a.m., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway Suite 510, Albany, NY 12204-2719 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, which 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, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, ACTING 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, and 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 N.Y. Pub. 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 N.Y. State Admin. Proc. 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.

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 §5230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER

DATED Albany New York

11/26/13 17 . 2013

SUE KELLY

Executive Deputy Commissioner of Health
New York State Health Department

Inquiries should be directed to:
Nathaniel White Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
FRANK M. LOBACZ, D.O.
CO-13-07-3723-A

STATEMENT
OF
CHARGES

FRANK M. LOBACZ, D.O., the Respondent, was authorized to practice medicine in New York State on or about July 12, 1974, by the issuance of license number 120717 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 12, 2010 in the United States District Court, Eastern District of New York, Respondent was found guilty of Conspiracy to Commit Health Care Fraud in violation of 18 United States Code (USC) §§ 1347 and 1349, Health Care Fraud in violation of 18 USC § 1347, Filing a False Annual Report of Employee Benefit Plan in violation of 26 USC § 7206(1) and three counts of Income Tax Evasion in violation of 26 USC § 7201, all felonies. On July 17, 2013, Respondent was sentenced to sixty-five months imprisonment, three years supervised release, restitution of \$3,813,935.03, \$17,500 fine, and \$800 assessment fee.

SPECIFICATION OF CHARGE

B. Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 8530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following.

1. The facts in Paragraph A.

DATE. December 27, 2013
Albany, New York

MICHAEL A. RISER
Deputy Counsel
Bureau of Professional Medical Conduct