

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

November 22, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

William Jean Gibbs, Jr., M.D.

REDACTED

Re: License No. 226006

Dear Dr. Gibbs:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 13-383. This order and any penalty provided therein goes into effect November 29, 2013.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Charles E. Kutner, Esq.
110 East 59th Street, 25th Floor
New York, NY 10022

IN THE MATTER
OF
WILLIAM GIBBS, JR., M.D.

MODIFICATION
ORDER

Upon the application of **WILLIAM GIBBS, JR., M.D.**, (Respondent), in the attached Modification Agreement, that is made a part of this Modification Order, it is

ORDERED, that the Modification Order, and its terms, are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing of a copy of this Modification Order, either by first class mail to Respondent at the address in the attached Modification Agreement or by certified mail to Respondent's attorney, or upon facsimile or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 11/21/13

REDACTED

~~ARTHUR S. HENGERER, M.D.~~
Chair
State Board for Professional
Medical Conduct

IN THE MATTER
OF
WILLIAM GIBBS, JR., M.D.
CO-11-07-4025-A

APPLICATION FOR
MODIFICATION ORDER

WILLIAM GIBBS, JR., M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about August 15, 2002, I was licensed to practice medicine in the State of New York and issued license number 226006 by the New York State Education Department.

My current address is REDACTED and I will advise the Director (Director) of the Office of Professional Medical Conduct (OPMC) of any change of my address within thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) issued decision BPMC No. 13-246 on July 24, 2013. The Board therein sustained one (1) Specification of professional misconduct against me.

A copy of the Statement of Charges used in that hearing, marked as Exhibit A, is attached to and part of this Modification Order. A copy of BPMC No. 13-246 is attached to and part of this Modification Order as Exhibit C.

In that decision, the Board, among others, suspended my license to practice medicine for three years, stayed the suspension and placed me on probation for three years. In mutual consideration of the Director and the Respondent agreeing to not pursue an appeal of BPMC No. 13-246 to the Administrative Review Board, I hereby agree to the following, amending the discipline imposed:

Three year suspension of my license to practice medicine, stayed pursuant to N.Y. Pub. Health Law § 230-a(9). I shall be placed on probation for a period of three (3) years, subject to the terms set forth in attached Exhibit B, and any extension and/or modifications, thereto.

Respondent shall enroll in and complete a continuing education program consisting of two courses each in the area of medical ethics and medical billing practices. This continuing education program is subject to the prior written approval of the Director, OPMC, and shall be completed within six months of the effective date of this Order. Respondent shall be permanently restricted from owning a solo medical practice or professional corporation.

I agree, further, that the Modification Order shall impose the following conditions:

That Respondent shall remain in continuous compliance with all requirements of New York Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the department all information required by the Department to develop a public physician profile for the licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law §230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

That Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502 including, but not limited to, the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in New York Education Law § 6502(4) to avoid registration and payment of fees. This condition shall

take effect 30 days after the effective date of the Modification Order and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the OPMC in its administration and enforcement of the Modification Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Modification Agreement.

Respondent shall meet with a person designated by the Director, OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Modification Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of the Modification Order shall constitute misconduct as defined by New York Education Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Modification Agreement and the Modification Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Modification Agreement.

I understand that if the Board does not adopt this Modification Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Modification Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to New York Public Health Law.

I agree that, if the Board adopts this Modification Agreement, the Chair of the Board shall issue a Modification Order in accordance with its terms. I agree that the Modification Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Modification Order by first

class mail to me at the address in this Modification Agreement, or to my attorney by certified mail, or upon facsimile or email transmission to me or my attorney, whichever is first. The Modification Order, this Modification Agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department of Health website.

I stipulate that the proposed sanction and Modification Order are authorized by New York Public Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Modification Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Modification Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Modification Order for which I apply, administratively and/or judicially, I agree to be bound by the Modification Order, and I ask that the Board adopt this Modification Agreement.

I understand and agree that the attorney for the Department, the Director, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Modification Application and Modification Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

AFFIRMED:

DATED: 9/25, 2013

REDACTED

WILLIAM GIBBS, M.D.
Respondent

The undersigned agree to Respondent's attached Modification Order and to its proposed penalty, terms and conditions.

DATE: 11/25, 2013

REDACTED

CHARLES E. KUTNER, Esq.
Attorney for Respondent

DATE: 11/15, 2013

REDACTED

JUDE B. MULVEY
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/20, 2013

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

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

IN THE MATTER
OF
WILLIAM GIBBS, JR., M.D.
CO-11-07-4025-A

STATEMENT
OF
CHARGES

WILLIAM GIBBS, JR., M.D., Respondent, was authorized to practice medicine in New York state on August 15, 2002, by the issuance of license number 226006 by the New York State Education Department.

FACTUAL ALLEGATIONS

A On or about November 14, 2012, in the United States District Court, Southern District of New York, Respondent was found guilty, after a plea of guilty to one count of Health Care Fraud in violation of 18 USC §.1347, a felony. He was sentenced to five years probation, restitution in the amount of \$1,440,669.00, \$100 fee and two hundred (200) hours of community service.

SPECIFICATION

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

1 The facts in Paragraph A.

DATED *April 22* 2013
Albany, New York

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

EXHIBIT B
Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; all current and past affiliations and/or privileges, with hospitals, institutions, facilities, medical practices, managed care organizations, and/or applications for such affiliations and/or privileges; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Modification Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.

8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
9. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
10. Respondent shall enroll in and complete a continuing education program in the areas of ethics and medical billing practices. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first 6 months of the probation period.
11. Respondent shall make available for review by a third party billing monitor and all office and accounts records, as directed by OPMC. Such billing monitor shall be proposed by Respondent and approved, in writing, by the Director, OPMC. Respondent shall fully cooperate in the review process. The review will determine whether the Respondent's medical billing and related documentation practices are conducted in a manner that complies with all Federal, State, and local statutes and regulations regarding billing for medical services and is accurate, under all relevant circumstances, as to services rendered and the clinical bases for those services.
 - A. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the billing monitor.
 - B. Respondent shall cause the billing monitor to report quarterly, in writing, to the Director of OPMC.
 - C. Any perceived deviation from proper billing practices or refusal to cooperate with the billing monitor shall be reported within 24 hours to OPMC.
12. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
13. Respondent shall comply with this Modification Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

Exhibit C

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

COPY

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
WILLIAM GIBBS, JR., M.D. : ORDER
CO-11-07-4025-A :
-----X
BPMC#13-246

A Commissioner's Order, Notice of Referral Proceeding and Statement of Charges, dated April 22, 2013, were served upon the Respondent, William Gibbs, Jr., M.D. **AIRLIE A.C. CAMERON, M.D., M.P.H. (Chair), MARY E. RAPPAZZO, M.D., and GAIL S. HOMICK HERRLING**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Jude B. Mulvey, Esq., Associate Counsel. The Respondent appeared by the Law Offices of Charles E. Kutner, LLP, Charles E. Kutner, Esq., of Counsel. A hearing was held on July 24, 2013. Evidence was received and witnesses sworn and heard 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 where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(ii) [conviction of committing an act constituting a crime under federal law]. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. William Gibbs, Jr., M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on August 15, 2002 by the issuance of license number 226006 by the New York State Education Department. (Exhibit #4).

2. On or about November 12, 2012, in the United States District Court, Southern District of New York, Respondent was found guilty, based upon a plea of guilty, to one count of Health Care Fraud, in violation of 18 USC §1347, a felony. Respondent was sentenced to five years of probation, restitution in the amount of \$1,440,669.00, \$100.00 fee and two hundred (200) hours of community service. (Exhibit #5).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a

unanimous vote of the Hearing Committee unless noted otherwise.

The evidence established that Respondent was convicted of committing a crime under federal law. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(a)(ii). Therefore, the Hearing Committee voted to sustain the First Specification of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, by a vote of 2-1 determined that Respondent's license to practice medicine should be suspended for a period of three years. The suspension shall be stayed, and Respondent placed on probation for a period of three years. The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

In considering the sanction to be imposed, it is instructive to review the crime to which Respondent pled guilty. United States Code § 1347 provides that "(a) Whoever knowingly

and willfully executes, or attempts to execute, a scheme or artifice (1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program", is guilty of health care fraud. United States Code §1347(b) further provides that "a person need not have...specific intent to commit a violation of this section".

In the instant case, Respondent used an existing professional corporation "Total Body Medical Diagnostics, P.C." to establish "no fault insurance clinic", where accident victims came for medical evaluation and treatment. The practice was actually run by non-physicians who submitted false claims for medical services from clinics in multiple locations, thereby collecting large sums of money. Respondent acknowledged signing large numbers of claims, and further admitted that he failed to verify the authenticity of the bills before signing them. By entrusting all operations to others without providing effective oversight, Respondent enabled a wide ranging scheme which resulted in more than a million dollars in fraudulent claims.

Respondent has, until now, had a distinguished career in rehabilitation medicine, running the departments of several major New York City hospitals. He presented very moving testimony from two of his patients, as well as by his parents. It is clear that

Respondent does not lack skills and knowledge necessary to practice medicine. The issue is whether he lacks the fundamental integrity to remain a member of the profession. A majority of the members of the Committee believe that Respondent's criminal conduct derived from a naïve faith in the good nature of others, rather than from a desire to achieve unjust enrichment at the expense of insurance companies.¹

In exercising our independent judgment as to the sanction to be imposed, we do take some guidance from the fact that the Court imposed probation instead of incarceration - a departure from the federal sentencing guidelines of thirty-seven to forty-six months of prison. Similarly, we determined that the public interest would not be served by revoking Respondent's medical license.

A period of stayed suspension, with probation is the most appropriate balance of the need to punish Respondent and protect the public. We sincerely hope that Respondent takes this opportunity to rehabilitate himself, and once again practice the profession.

¹ The dissenting member of the Hearing Committee believes that the lack of integrity demonstrated by Respondent's criminal conduct warranted an outright revocation of his medical license.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

- 1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;
- 2. Respondent's license to practice medicine in New York State be and hereby is SUSPENDED for a period of THREE (3) YEARS. Said suspension shall be STAYED and Respondent placed on probation for a period of THREE (3) YEARS from the effective date of this Determination. The complete terms of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein;
- 3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Tupper Lake, New York
August 14, 2013

REDACTED

AIRLIE A.C. CAMERON, M.D., M.P.H. (CHAIR)

MARY E. RAPPAZZO, M.D.
GAIL HOMICK HERRLING

TO: Jude B. Mulvey, Esq.
Associate Counsel
New York State Department of Health
Corning Tower - Room 2512
Albany, New York 12237

William Gibbs, Jr., M.D.

REDACTED

Charles E. Kutner, Esq.
Law Offices of Charles E. Kutner, LLP
110 East 59th Street - 25th Floor
New York, NY 10022-1304

APPENDIX I

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

IN THE MATTER
OF
WILLIAM GIBBS, JR., M.D.
CO-11-07-4025-A

STATEMENT
OF
CHARGES

WILLIAM GIBBS, JR., M.D., Respondent, was authorized to practice medicine in New York state on August 15, 2002, by the issuance of license number 226006 by the New York State Education Department.

FACTUAL ALLEGATIONS

A On or about November 14, 2012, in the United States District Court, Southern District of New York, Respondent was found guilty, after a plea of guilty to one count of Health Care Fraud in violation of 18 USC § 1347 a felony. He was sentenced to five years probation, restitution in the amount of \$1,440,669.00, \$100 fee and two hundred (200) hours of community service.

SPECIFICATION

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

1 The facts in Paragraph A.

DATED: *April 22* 2013
Albany, New York

REDACTED

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

APPENDIX II

William Gibbs, Jr., M.D. Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Menands, New York 12204; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of the OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director of the OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.