

PUBLIC

BPMC No. 13-433

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

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

DATED Albany, New York

Waxente 27, 2013

REDACTED

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

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

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 \$3,613,935.03, \$17,500 fine, and \$600 assessment fee.

SPECIFICATION OF CHARGE

B. Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(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

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct