

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

February 22, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Albert R. Cioffi, M.D.

REDACTED

Albert R. Coiffi, M.D.

Swallowing Diagnostics

11085 NW 15th Street

Coral Springs, Florida 33071

Joel E. Ablove, Esq.

NYS Department of Health

ESP-Corning Tower-Room 2512

Albany, New York 12237

RE: In the Matter of Albert R. Cioffi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-41) 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

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

-----X
IN THE MATTER
OF
ALBERT R. CIOFFI, M.D.

DETERMINATION

AND

ORDER

-----X
BPMC #11-41

A hearing was held on February 16, 2011, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges, dated December 10, 2010, were served upon the Respondent, **ALBERT R. CIOFFI, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Gregory Fried, M.D.**, Chair, **Eleanor C. Kane, M.D.**, and **Dennis Zimmerman, M.S.**, 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 **Joel E. Ablove, Esq.**, of Counsel. The Respondent, **Albert R. Cioffi, M.D.**, did not appear, although duly served. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

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. **Albert R. Cioffi, M.D.**, the Respondent, did not appear at the hearing, although he was duly served and notified of the hearing on December 27, 2010. (Petitioner's Exhibit 2)
2. **Albert R. Cioffi, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 24, 1980, by the issuance of license number 143848 by the New York State Education Department. (Petitioner's Ex. 4)
3. On or about January 9, 2008, in the United States District Court, Southern District of Florida, Respondent was found guilty, based on a plea of guilty, of Misbranding a drug while held for sale, in violation of 21 U.S.C. §331(k), 333(a)(1) and 352(i)(3), a misdemeanor, and was sentenced to three (3) years probation, six (6) months of home detention electronic monitoring, one hundred (100) hours of community service, a \$25.00 assessment fee, and a fine of \$5,000.00. (Petitioner's Ex. 5)
4. On or about June 19, 2009, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), inter alia, issued Respondent a letter of concern, required him to perform one hundred (100) hours of community service, placed his license to practice medicine on one (1) year probation

with conditions, placed his license to practice under a board certified physician, completion of a laws and rules course, a records course, presentation of a 1 hour lecture on ethics, completion of 5 hours CME in medical ethics within 6 months of the Order, submission of quarterly reports to the Board, and required him to pay a \$6,000.00 fine and \$10,000.00 reimbursement of costs, based on the sale, manufacturing, repackaging, and distribution of a drug not approved by the FDA, and for failing to keep appropriate medical records, inappropriate prescribing, and performing services unauthorized by a patient. (Petitioner's Ex. 5)

VOTE OF THE HEARING COMMITTEE

FIRST 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...."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized disciplinary agency of another state, where the conduct resulting in the 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 did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits, notwithstanding the Respondent's absence. The record in this case indicates that Respondent has not responded to any of the communications from the Department, was aware of this proceeding, and has chosen to ignore it.

The record herein also shows that on or about January 9, 2008, in the United States District Court, Southern District of Florida, Respondent was found guilty, based on a plea of guilty, of Misbranding a drug while held for sale, in violation of 21 U.S.C. §331(k), 333(a)(1) and 352(i)(3), a misdemeanor, and was sentenced to three (3) years probation, six (6) months of home detention electronic monitoring, one hundred (100) hours of community service, a \$25.00 assessment fee, and a fine of \$5,000.00. It also appears in the record that, on or about June 19, 2009, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), inter alia, issued Respondent a letter of concern, required him to perform one hundred (100) hours of community service, placed his license to practice medicine on one (1) year probation with conditions, placed his license to practice under a board certified physician, completion of a laws and rules course, a records course, presentation of a 1 hour lecture

on ethics, completion of 5 hours of education in medical ethics within 6 months of the Order, submission of quarterly reports to the Board, and required him to pay a \$6,000.00 fine and \$10,000.00 reimbursement of costs, based on the sale, manufacturing, repackaging, and distribution of a drug not approved by the FDA, and for failing to keep appropriate medical records, inappropriate prescribing, and performing services unauthorized by a patient. (Petitioner's Ex. 5).

Since the Respondent chose not to appear, the panel had no evidence or indication of remorse on the part of the Respondent. The panel reviewed the full record and deemed the charges so serious as to warrant revocation, especially in view of the fact that the Respondent chose to ignore this proceeding.

As to the penalty, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license and thus the unanimous determination of the panel was that license of the Respondent to practice medicine in New York State should be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The first and second specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**
2. The license of the Respondent to practice medicine in New York State is revoked.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Great Neck, New York
February 20, 2011

REDACTED


Gregory Fried, M.D., Chair,

Eleanor C. Kane, M.D.
Dennis Zimmerman, M.S.,

To: Albert R. Cioffi, M.D.
REDACTED

Albert R. Cioffi, M.D.
Swallowing Diagnostics
11085 NW 15th Street
Coral Springs, FL 33071

Joel E. Ablove, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I



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

IN THE MATTER

OF

ALBERT R. CIOFFI, M.D.
CO-09-06-4071-A

NOTICE OF

REFERRAL

PROCEEDING

TO: ALBERT R. CIOFFI, M.D.
Swallowing Diagnostics
11085 NW 15th Street
Coral Springs, FL 33071

ALBERT R. CIOFFI M.D.
REDACTED

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 16th day of February, 2011, 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, that 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 and/or sworn testimony on your behalf. Such evidence and/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 that 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. JAMES F. HORAN, ACTING 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 (10) 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 (10) 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 (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) 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 demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here /

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 (5) 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

December 10, 2010

REDACTED

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

Inquiries should be addressed to:

Joel E. Abelow
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER
OF
ALBERT R. CIOFFI, M.D.
CO-09-06-4071-A

STATEMENT
OF
CHARGES

ALBERT R. CIOFFI, M.D., Respondent, was authorized to practice medicine in New York state on October 24, 1980, by the issuance of license number 143848 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 9, 2008, in the United States District Court, Southern District of Florida, Respondent was found guilty, based on a plea of guilty, of Misbranding a drug while held for sale, in violation of 21 U.S.C. §331(k), 333(a)(1) and 352(i)(3), a misdemeanor, and was sentenced to three (3) years probation, six (6) months of home detention electronic monitoring, one hundred (100) hours of community service, a \$25.00 assessment fee, and a fine of \$5,000.00.

B. On or about June 19, 2009, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), inter alia, issued Respondent a letter of concern, required him to perform one hundred (100) hours of community service, placed his license to practice medicine on one (1) year probation with conditions, placed his license to practice under a board certified physician, completion of a laws and rules course, a records course, presentation of a 1 hour lecture on ethics, completion of 5 hours CME in medical ethics within 6 months of the Order, submission of quarterly reports to the Board, and required him to pay a \$6,000.00 fine and \$10,000.00 reimbursement of costs, based on the sale, manufacturing, repackaging, and distribution of a drug not approved by the FDA, and for failing to keep appropriate medical records, inappropriate prescribing, and performing services unauthorized by a patient.

C. The conduct resulting in the Florida 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) (having been convicted of committing an act constituting a crime under federal law.)

SPECIFICATIONS

FIRST 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.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized disciplinary agency of another state, where the conduct resulting in the disciplinary action 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.

DATED: *December 10*, 2010
Albany, New York

REDACTED

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