



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

August 26, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin C. Roe, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Candanino Gazman, M.D.
117 Susquehanna Avenue
Olyphant, PA 18447

Effective Date: 09/02/96

RE: In the Matter of Candanino Gazman, M.D.

Dear Mr. Roe and Dr. Gazman:

Enclosed please find the Determination and Order (No. 96-196) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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 all action 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.

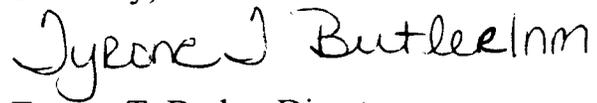
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

CC - Y

IN THE MATTER
OF
CANDANINO GAZMAN, M.D.

DETERMINATION
AND
ORDER
BPMC-96- 196

A Notice of Hearing and Statement of Charges, both dated May 30, 1996, were served upon the Respondent, **CANDANINO GAZMAN, M.D.** **PETER B. KANE, M.D.**, (Chair), **GERALD HAUSLER, D.O.** and **MICHAEL WALKER**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on July 10, 1996. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **KEVIN C. ROE, ESQ.**, of Counsel. The Respondent did not appear and was not represented by counsel. 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 Section 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 Section 6530 (9) (a) (ii), 6530 (9) (b) and 6530 (9) (d). A copy of the Notice of Referral Proceeding and 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. Respondent was authorized to practice medicine in New York State on April 8, 1974, by the issuance of license number 119738 by the New York State Education Department. (Pet. Ex. #2)
2. On or about June 22, 1994, Respondent was convicted after a jury trial in the United States District Court for the Middle District of Pennsylvania of two counts of willfully attempting to evade and defeat income tax and self employment tax in violation of 26 U.S.C. 7201 and 18 U.S. C 2 and two counts of willfully making and subscribing a false tax return in violation of 26 U.S.C. 7206(1) and 18 U.S. C.2. On or about January 19, 1995, Respondent was sentenced to two years probation with six months house arrest and ordered to pay restitution and court costs. (Pet. Ex.3)

3. On or about October 24, 1995, the Pennsylvania State Board of Medicine adopted a Consent Agreement in which Respondent admitted having been convicted of a felony in a federal court in violation of 63 P.S. Section 422.41(3). As a result, Respondent's, license to practice medicine in the State of Pennsylvania was suspended for two years with the suspension stayed in favor of two years probation.

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 Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was convicted of a felony for tax evasion and filing a false tax report. Section 6530 (9) (a) (ii) defines professional misconduct as being convicted of committing an act constituting a crime under federal law. In addition, the Pennsylvania State Board of Medicine suspended Respondent's license for two years for the aforementioned conviction. The suspension was stayed and Respondent was placed on probation. Section 6530(9)(b) defines professional misconduct as 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. Section 6530(9)(d) defines professional misconduct as having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action, would if committed in New York State, constitute professional misconduct under the laws of New York state.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee notes that Respondent did not appear at the hearing and that there is nothing to consider in mitigation of the penalty. The Hearing Committee finds that Respondent's repeated history of dishonesty demonstrates unethical behavior by a physician. The Hearing Committee contends that a physician who commits serious fraud of this nature cannot be allowed to practice medicine in the State of New York. The Hearing Committee further believes that if Respondent wishes to re-apply for his New York state license at some time in the future, his circumstances on that date will be taken into consideration by the licensing agency. Therefore, revocation is the appropriate sanction in this instance.

APPENDIX I

STATE OF NEW YORK
DEPARTMENT OF HEALTH
DEPT. ✓..... RESET..... EXHIBIT... 1.....
ID. ✓..... EVD.....
DATE..... INITIALS.....

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
CANDANINO GAZMAN, M.D. : PROCEEDING

-----x

TO: CANDANINO GAZMAN, M.D.
117 Susquehanna Avenue
Olyphant, Pennsylvania 18447

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 10th day of July, 1996, at 10:00 in the forenoon of that day at the OGS Conference Room (at entrance to Corning Tower Building), South Mall, Concourse Level, Empire State Plaza, Albany, New York 12230.

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. 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 1, 1996.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 1, 1996, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

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
May 30, 1996



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

Inquiries should be addressed to:

Kevin C. Roe
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
CANDANINO GAZMAN, M.D. : CHARGES

-----X

CANDANINO GAZMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 8, 1974 by the issuance of license number 119738 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 22, 1994, Respondent was convicted after a jury trial in the United States District Court for the Middle District of Pennsylvania of two counts of willfully attempting to evade and defeat income tax and self employment tax in violation of 26 U.S.C. 7201 and 18 U.S.C. 2 and two counts of willfully making and subscribing a false tax return in violation of 26 U.S.C. 7206(1) and 18 U.S.C. 2. On or about January 19, 1995, Respondent was sentenced to two years probation with six months house arrest and ordered to pay restitution and court costs.

B. On or about October 24, 1995, the Pennsylvania State Board of Medicine adopted a Consent Agreement in which Respondent admitted having been convicted of a felony in a federal court in

violation of 63 P.S. §422.41(3). Respondent's license to practice medicine in the State of Pennsylvania was suspended for two years with the suspension stayed in favor of two years probation. The conduct upon which the Pennsylvania discipline was based would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(9)(a)(ii).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent is charged with having been convicted of committing an act constituting a crime under federal law in violation of N.Y. Educ. Law §6530(9)(a)(ii) (McKinney Supp. 1996) in that, Petitioner alleges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

Respondent is charged with 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 misconduct under the laws of New York State in violation of New York Education Law §6530(9)(b) (McKinney Supp. 1996) in that Petitioner alleges:

2. The facts in Paragraph B.

THIRD SPECIFICATION

Respondent is charged having his license to practice medicine revoked, suspended or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State in violation of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) in that, Petitioner alleges:

3. The facts in Paragraph B.

DATED: *May 30*, 1996
Albany, New York

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