Public

NEW YORK
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HEALTH

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

Sue Kelly
Executive Deputy Commissioner

August 10, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Alexander G. Bateman, Jr., Esq.
Ruskin, Moscou, Faltischek, P.C.
1425 RXR Plaza
Uniondale, New York 11556-1425

Marvell Scott, M.D.
REDACTED

Marvell Scott, M.D.
REDACTED

Revenue Unit
NYS Department of Health
ESP-Corning Tower-Room 2784
Albany, New York 12237

RE: In the Matter of Marvell Scott, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-161) 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.

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 Respondent or the Department may seek a review of a committee determination.

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,

REDACTED

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	**DETERMINATION**
OF	**AND**
MARVELL SCOTT, M.D.	**ORDER**
C0-11-08-4370-A	BPMC #12-161

COPY

A hearing was held on June 14, 2012 at the Capital District Regional Office[1] of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, dated March 5, 2012, were served upon the Respondent, **Marvell Scott, M. D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **C. Deborah Cross, M.D., Chair**, **Arlie A. C. Cameron, M.D., M.P.H.**, and **Paul J. Lamblase,** 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 **Michael G. Bass, Esq.**, of Counsel. The Respondent, **Marvell Scott, M.D.**, did appear with counsel, **Alexander G. Bateman, Jr., Esq.,** of the firm of Ruskin, Moscou, Faltischek, P.C. of Uniondale, New York. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

[1] Located at the Frear Building, Corner of Fulton & Third Streets, Troy, New York

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)(i) – by being convicted of committing an act constituting a crime under New York State law, specifically a violation of New York Penal Law § 160.10(1), Endangering the Welfare of a Child, a class A Misdemeanor.

Copies of 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: Marvell Scott, M.D.

Maria Gerraputa, R.N. (by phone)

Elijah Brooks (by phone)

M. Caline Heslop (by phone)

Dr. Robert Monaco (by phone)

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. **Marvell Scott, M.D.**, the Respondent, did appear at the hearing with counsel. He was duly served with process, by personal service, on March 26, 2012. (Petitioner's Exhibit 2)
2. **Marvell Scott, M.D.**, the Respondent, was authorized to practice medicine in New York State on August 29, 2006, by the issuance of license number 241676 by the New York State Education Department. (Petitioner's Ex.4)
3. On or about August 16, 2011, in the Supreme Court of the State of New York, New York County, New York, Respondent was found guilty, based on a plea of guilty, of Endangering the Welfare of a Child, in violation of New York Penal Law §160.10 (1), a class A Misdemeanor. (Petitioner's Ex. 3).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York State law, to wit, the crime of Endangering the Welfare of a Child, in violation of New York Penal Law §160.10(1), a class A Misdemeanor.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel. There was no dispute about jurisdiction and 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 and that jurisdiction had been established over the Respondent

. The record in this case indicates that Respondent had been convicted of a Misdemeanor in Supreme Court, New York County, after a plea of guilty to the crime

of Endangering the Welfare of a Child. The Respondent was sentenced by the court to do twenty days of community service as a penalty for this crime and to pay court costs of some $250.00.

There was no dispute about the basic fact of this case and Respondent did not deny that in a criminal action in the Supreme Court of the State of New York, New York County, he was found guilty, based on a plea of guilty, to the crime of Endangering the Welfare of a Child, in violation of New York Penal Law §160.10 (1), a class A Misdemeanor.

The indictment in this case, Exhibit 4, shows that the Respondent had been initially charged with felony statutory rape and patronizing a prostitute. The Respondent testified at the hearing that he did not know that the prostitute was only 14 years old and that he pled guilty to avoid the trial and the risk of a felony conviction. (T. 76)

The panel noted that the criminal court's punishment involved community service and no jail time. The Respondent had several character witnesses testify to the good work he has been doing in the community and the public service that he has been providing to children through the Chris Canty Foundation and as a coach through the Harlem Little League baseball program. (T. 72)

The panel was impressed with the good work the Respondent has been doing in the community and was unanimous in concluding that revocation would be too harsh a penalty. The panel noted that the Respondent was remorseful and had already been punished greatly for his actions, noting that the Respondent has already lost his position as a television sports commentator because of this conviction.

The Committee considered the full range of penalties available in this case and concluded that there should be a fine and a censure and reprimand. In addition, the panel determined, unanimously, that there should be a restriction placed on the Respondent's medical license such that a chaperone is to be required in the treatment of female patients.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**

2. The Respondent is censured and reprimanded for conduct resulting in the plea settlement of the Supreme Court, New York County, criminal action, the basis of which would constitute misconduct under the laws of New York State.

3. The Respondent's license to practice medicine in New York is restricted such that in the course of practicing medicine in New York State, any examination or treatment of a female patient shall be done only in the presence of a chaperone. The chaperone shall be proposed by the Respondent and subject to the written approval of the Director of OPMC in accordance with terms and conditions established by the Director.

4. A fine of $10,000.00 is imposed on the Respondent, Dr. Marvell Scott, M.D. The fine is payable in full within 90 days of the effective date of this Order. Payment must be submitted to the New York State Department of Health, Bureau of Accounts

Management, Revenue Unit, Empire State Plaza, Corning Tower, Room 2784, Albany, New York 12237. Failure to pay the fine on time will subject the Respondent to all provisions of law relating to debt collection by New York State, including 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 and licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).

5. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Elmsford, New York
August 8, 2012

REDACTED

C. Deborah Cross, M.D., Chair

Arlie A. C. Cameron, M.D., M.P.H.
Paul J. Lambiase

To:

Michael G. Bass. Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

Marvell Scott, M.D.
REDACTED

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REDACTED

Alexander G. Bateman, Jr., Esq.
Ruskin, Moscou, Faltischek, P.C.
1425 RXR Plaza
Uniondale, New York 11556-1425

Revenue Unit
NYS Department of Health, Bureau of Accounts Management
Corning Tower, Room 1717
Empire State Plaza, Albany, New York 12237

APPENDIX I

Dept EXHIBIT
1
06/14/2012

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

IN THE MATTER OF MARVELL SCOTT, M.D. CO-11-08-4370-A	NOTICE OF REFERRAL PROCEEDING

TO: Marvell Scott, M.D.
REDACTED

Marvell Scott, 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 May, 2012, at 10:30 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
March 5, 2012

REDACTED

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

Inquiries should be addressed to:

JOEL E. ABELOVE
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 MARVELL SCOTT, M.D. CO-11-08-4370-A	STATEMENT OF CHARGES

MARVELL SCOTT, M.D., Respondent, was authorized to practice medicine in New York State on August 29, 2006, by the issuance of license number 241676 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 16, 2011, in the Supreme Court of the State of New York, New York County, New York, Respondent was found guilty, based on a plea of guilty, of Endangering the Welfare of a Child, in violation of New York Penal Law, §160.10(1), a class A Misdemeanor, was sentenced to a conditional discharge for one year, 20 days of community service, and $250.00 in fees..

SPECIFICATION

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

1. The facts in paragraph A.

DATED: March 5, 2012
Albany, New York

REDACTED

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