

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

November 26, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Teresita Mascardo, M.D.

Redacted Address

Maximino Medina, Esq. &
Douglas Varga, Esq.
Zeldef, Needle & Cooper
1000 Lafayette Boulevard
P.O. Box 1740
Bridgeport, Connecticut 06601-1740

Teresita Mascardo, M.D.
598 Danbury Road
Ridgefield, Connecticut 06877

Michael Bass, Esq. &
Robert Bogan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street - Suite 303
Troy, New York 12180

RE: In the Matter of Teresita Mascardo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-228) 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., 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 Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
TERESITA MASCARDO, M.D.

DETERMINATION
AND
ORDER
BPMC #08-228

A hearing was held on November 19, 2008, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding, dated August 13, 2008, and a Statement of Charges, dated August 12, 2008, were served upon the Respondent, **Teresita Mascardo, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Alexander M. Yvers, M.D.**, Chairperson, **James R. Dickson, M.D.**, and **Ms. Robin B. Frank**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Michael Bass, Esq.**, and **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by Zeldef, Needle & Cooper, **Maximino Medina, Esq.**, and **Douglas Varga, Esq.**, of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

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 Section 6530(9)(a)(ii). Copies of the Commissioner's Order and 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:

Teresita Mascardo, M.D.

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. Teresita Mascardo, M.D., the Respondent, was authorized to practice medicine in New York State on February 4, 1977, by the issuance of license number 129782 by the New York State Education Department (Petitioner's Ex. 4).

2. On or about June 19, 2007, in the United States District Court, District of Connecticut, the Respondent was found guilty, based on a plea of guilty, of Making and Subscribing a False Tax Return, in violation of 26 U.S.C. Section 7206(1), a felony, and was sentenced to five years probation (the first four months in home confinement), community service which included providing services to at least 100 patients, a \$100.00 special assessment and a \$30,000.00 fine (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted of Making and Subscribing a False Tax Return for 2001, which is a felony under Federal law. The Petitioner recommended that the Hearing Committee revoke the Respondent's license to practice medicine for this crime. The Petitioner's primary rationale for this position is that every physician who has been convicted of a felony should suffer a license revocation. The Hearing Committee disagrees with this approach. If it had been the intention of the New York State Legislature to have the conviction of a felony always result in a license revocation, Section 230-a the Public Health Law, the statute that enumerates the penalties that may be imposed for professional misconduct, would so specify. Instead, this statute leaves to the discretion of a hearing committee the penalty to be chosen from those listed in the statute. The same discretion is provided for choosing a penalty in a felony case as in any other professional disciplinary hearing.

The only other rationale offered by the Petitioner for imposing a revocation is that the felony was not an isolated incident. The Petitioner made civil settlements for taxes owed for 1998, 1999, and 2000. The Petitioner argued that since these settlements were part of the plea agreement in the felony case, it could safely be assumed that there was criminal activity in those three years also. The hearing record does not support this argument. Taxes can be owed because of an honest mistake or misinterpretation of the tax law. There is no evidence that anything more serious than this was the cause of the problems in 1998, 1999 and 2000. A Connecticut corporation owned by the Respondent pled guilty to failing to report income in 2000. The Petitioner argued that this is additional evidence that the crime before this Hearing Committee was not an isolated incident. However, nothing in the hearing record discloses any details about this crime. Most importantly, the hearing record does not disclose what role the Respondent played in the commission of the corporation's crime. Nothing can justifiably be presumed about the Respondent's role in that crime.

The crime at issue is the failure to report income of \$14,008.00 on the Respondent's 2001 income tax return. The unpaid tax on this amount was \$4,672.00 (Respondent Ex. N). There was no possibility that this crime endangered any patient. It is difficult to justify ending a physician's career for such an infraction, particularly when the evidence discloses that the Respondent has been an excellent physician. Respondent Exhibit B, a letter from Ms. April Mirabito, an employee of the Respondent, states:

I have seen many occasions when she was merciful and generous to patients...I have seen her graciously help patients who she knew could not pay her for her services. There was a man who was assaulted and needed reconstructive surgery, children who lacerated their faces badly, but whose parents didn't want them to be scarred for life even though they couldn't afford plastic surgery. I have personally witnessed so many cases like these over the years.

Ms. Bernice Foege, a patient, stated in Respondent Ex. F:

My daughter (also her patient) and I have often remarked that Teresita has a most discerning eye; she could pinpoint the problem, explain it in layman's terms, and solve it, and always with compassion and skill.

Ms. Judy A. Morrow, an employee, stated in Respondent Ex. G:

Dr. Mascardo is such a caring and conscientious physician. The care that is taken with each patient is exemplary. Her first concern is always the patient, and their happiness with the results of surgery. If the patient has any legitimate concern, she always corrects or tries to meet the patient's anticipated results. In those instances she will not charge the patient for any corrective surgery.

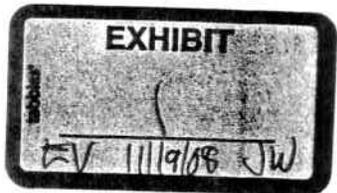
Dr. Mascardo is an extremely talented surgeon. She has created procedures, which are now being used all over the country. She is well respected in the plastic surgery community, as well she should be. 99.9% of our patients are so happy with their results. They not only recommend her to friends and family, but any one who will listen to them. Dr. Mascardo has not advertised her services since I've worked with her. She is so well thought of that patients arrive by referrals from other patients.

There are many more letters in the hearing record attesting to the Respondent's compassion, generosity and dedication to her patients, employees, family and friends.

Because of the Commissioner's Order, the Respondent has been prohibited from practicing medicine in New York State since mid-August of this year. Given the facts of this case, there is no need to prohibit the Respondent from practicing for any greater length of time. A censure and reprimand and a \$5,000.00 fine will be imposed. The Respondent will also be required to provide 25 hours of public service by means of providing free medical care to residents of New York State. This public service will be in addition to the community service required in her criminal sentence and must be completed within six months of the effective date of this Determination and Order. The Petitioner's Office of Professional Medical Conduct (NYS Department of Health, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Troy, NY 12180) will approve and oversee the provision of public service.

ORDER

APPENDIX I



IN THE MATTER
OF
TERESITA MASCARDO, M.D.
CO- 07-09-5677-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: TERESITA MASCARDO, M.D.
Redacted Address

TERESITA MASCARDO, M.D.
598 Danbury Rd
Ridgefield, CT 06877

TERESITA MASCARDO, M.D.
Woman to Woman Cosmetic Surgery, PLLC
120 East 61st Street
New York, NY 10021

The undersigned, Richard F. Daines, M.D., 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 **TERESITA MASCARDO, M.D.**, Respondent, licensed to practice medicine in the State of New York on February 4, 1977, by license number 129782, has been convicted of committing an act constituting a felony under federal law, in the United States District Court, District of Connecticut, 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 **TERESITA MASCARDO, M.D.**, 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. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law §230(12).

**ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN
DEFIANCE 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 that a hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure 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 the 17th day of September, 2008, at 10:00 a.m., at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing 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, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

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 or sanction 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 FORTH 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
8/17/2008

Redacted Signature

~~Richard F. Daines, M.D.~~
RICHARD F. DAINES, M.D.
Commissioner of Health
New York State Department of Health

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
TERESITA MASCARDO, M.D.
CO-07-09-5677-A

STATEMENT
OF
CHARGES

TERESITA MASCARDO, M.D., Respondent, was authorized to practice medicine in New York state on February 4, 1977, by the issuance of license number 129782 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 19, 2007, in the United States District Court, District of Connecticut, Respondent was found guilty, based on a plea of guilty, of Making and Filing a False Tax Return, in violation of 26 U.S.C. §7206(1), a felony, and was sentenced to five (5) years probation, the first four (4) months in home confinement with electronic monitoring, community service and provide services to not fewer than one hundred (100) patients, a \$100.00 special assessment, and a \$30,000.00 fine.

SPECIFICATION

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

1. The facts in Paragraphs A.

DATED: *Aug. 12*, 2008
Albany, New York

Redacted Signature

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