

NEW YORK
state department of
HEALTH

Public

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

June 2, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

McCarthy George Smith, M.D.

REDACTED

David W. Quist, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of McCarthy George Smith, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-143) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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

IN THE MATTER
OF
MCCARTHY GEORGE SMITH, M.D.
CO-12-10-5080-A

DETERMINATION
AND
ORDER
BPMC #14-143

A hearing was held on April 24, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges dated January 9, 2014, were served upon the Respondent, McCarthy George Smith, M.D. Pursuant to Section 230(10)(e) of the Public Health Law, Virginia R. Marty, Chairperson, Jonathan Ecker, M.D. and James G. Egnatchik, M.D. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Christine C. Traskos, Esq. Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James Dering, Esq., General Counsel, by David W. Quist, Esq. of Counsel. The Respondent appeared but was not represented by 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 proceeding was brought pursuant to Public Health Law Section 230(10). The statute provides for an expedited hearing when a licensee is charged 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 this case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i).

Copies of the Notice of Referral Hearing and the Statement of Charges are attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner: None

For the Respondent: McCarthy George Smith, 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." or transcript page numbers ("T."). 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. McCarthy George Smith, M.D., the Respondent, was authorized to practice medicine in New York State on June 13, 1986 by the issuance of license number 166361 by the New York State Education Department. (Petitioner's Ex. 3)

2. On December 21, 2011, in the Criminal Division of the Mount Vernon (New York) City Court, Respondent pled guilty to a charge of criminal tax fraud in the 5th degree, a violation of section 1802 of the Tax Law and a misdemeanor offense under New York State law. (Petitioner's Ex.4)
3. On December 21, 2011, in the Criminal Division of the Mount Vernon (New York) City Court, Respondent pled guilty to a charge of attempted repeat failure to file a return, a violation of section "110-1802(a)" (sic) of the Tax Law (more accurately, section 1808 of the Tax Law, in conjunction with section 110 of the Penal Law), a misdemeanor offense under New York State law.
4. Respondent was sentenced to probation for a three year period, and required to pay restitution in the amount of \$80,920 in association with the convictions resulting from the aforementioned guilty pleas.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION OF MISCONDUCT

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law.

VOTE: Sustained (3-0)

SECOND SPECIFICATION OF MISCONDUCT

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent appeared at the hearing and made a statement to the Hearing Committee. Respondent does not contest the charges but stated that he is unable to pay the \$5,000 civil penalty that was requested by the Department due to financial hardship. Respondent explained that he incurred his initial loss of income after he lost his privileges at Lawrence Hospital in Bronxville, New York in 2012. Respondent had been chief of surgery for six years but believes that he lost his privileges due to hospital "politics." Respondent has been unable to obtain privileges at other hospitals because the loss of the Lawrence Hospital privileges is recorded on the National Practitioner Databank. Respondent maintains a private office and works at an ambulatory surgery center but his previous level of income has not been restored. Respondent also incurred additional debt when he loaned significant money to his brother Daniel who had been unemployed for four years. Daniel was ultimately killed in the September 11, 2001 bombings at the World Trade Center while working at Euro Broker's. Daniel's debt has never been repaid. Respondent stated that he is presently repaying the income tax debt at a rate of \$2400 per month. (T.8-21)

The Hearing Committee considered Respondent's statement as mitigation against the penalty sought by the Department. The Hearing Committee believes that Respondent has encountered a series of personal problems that has negatively impacted his financial resources. They believe that additional sanctions

or pecuniary punishment are not warranted. The Hearing Committee further notes that Respondent's misconduct did not involve patient care.

As a result, the Hearing Committee concludes that no further action should be taken against Respondent's license to practice medicine in New York State. This determination was reached after due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are SUSTAINED;
2. NO FURTHER ACTION shall be taken against Respondent's license to practice medicine in New York State;
3. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Marcellus, New York

May 27, 2014

REDACTED

Virginja R. Marty
Chairperson

Jonathan Ecker, M.D.
James G. Egnatchik, M.D.

TO:

McCarthy George Smith, M.D.

REDACTED

David W. Quist, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower- Rm. 2512
Empire State Plaza
Albany, NY 12237

APPENDIX I

IN THE MATTER
OF
MCCARTHY GEORGE SMITH, M.D.
CO-12-10-5080-A

NOTICE OF
REFERRAL
PROCEEDING

TO: McCarthy Smith, M.D. McCarthy Smith, M.D.
26 Pondfield Road West REDACTED
Bronxville, NY 10708

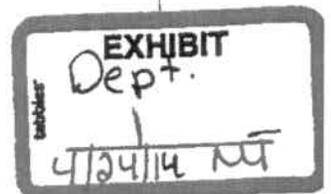
McCarthy Smith, M.D.
REDACTED

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 20th day of March, 2014, 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.

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, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, 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

Jan. 9, 2014

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to

David W. Quist
Associate Attorney
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
MCCARTHY GEORGE SMITH, M.D.

STATEMENT
OF
CHARGES

MCCARTHY GEORGE SMITH, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 13, 1986 by the issuance of license number 166361 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 21, 2011, in the Criminal Division of the Mount Vernon (New York) City Court, Respondent pled guilty to a charge of criminal tax fraud in the 5th degree, a violation of section 1802 of the Tax Law and a misdemeanor offense under New York State law.

- B. On or about December 21, 2011, in the Criminal Division of the Mount Vernon (New York) City Court, Respondent pled guilty to a charge of attempted repeat failure to file a return, a violation of section "110-1802(a)" (*sic*) of the Tax Law (more accurately, section 1808 of the Tax Law, in conjunction with section 110 of the Penal Law), a misdemeanor offense under New York State law.

- C. Respondent was sentenced to probation for a three year period, and required to pay restitution in the amount of \$80,920 in association with the convictions resulting from the guilty pleas referenced in paragraphs A and B, above.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (N.Y.S.) (FIRST)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

1. The facts in Paragraphs A and C.

SECOND SPECIFICATION

CRIMINAL CONVICTION (N.Y.S.) (SECOND)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

1. The facts in Paragraphs B and C.

DATE: January 7, 2014
Albany, New York

REDACTED

Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct