

March 8, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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Hodgson Russ, LLP
677 Broadway
Albany, New York 12207

Robert Joseph Aquino, M.D.

REDACTED

RE: In the Matter of Robert Joseph Aquino

Dear Parties:

Enclosed please find the Determination and Order (No. 13-67) 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

COPY

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
ROBERT JOSEPH AQUINO, M.D. : ORDER
CO-12-01-0185-A :
-----X
BPMC #13-67

A Commissioner's Order, Notice of Referral Proceeding and Statement of Charges, dated September 13, 2012, were served upon the Respondent, Robert Joseph Aquino, M.D. **TREVOR A. LITCHMORE, M.D. (Chair), JANET M. MILLER, R.N., and REID T. MULLER, M.D.,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Michael G. Bass, Esq., Assistant Counsel. The Respondent appeared by Hodgson Russ, LLP, William Comiskey, Esq., of Counsel. A hearing was held on January 24, 2013. 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 §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 §6530(9)(a)(ii), by being convicted of a crime under federal law.

A copy of the Statement of Charges is attached to this Determination and Order in Appendix I. Based upon Respondent's criminal conviction, the Executive Deputy Commissioner of Health, summarily suspended Respondent's license to practice medicine in New York State, pending the outcome of this hearing. The summary suspension became effective on September 13, 2012.

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. Robert Joseph Aquino, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on June 12, 1986 by the issuance of license number 166358 by the New York State Education Department. (Exhibit #3).

2. On or about January 3, 2012, in the United States District Court, Southern District of New York, Respondent was convicted upon a plea of guilty of felony Conspiracy to Commit Bribery, in violation of Title 18 of the United States Code Sections 1952(a)(3) and 371. On May 1, 2012, Respondent was sentenced, *inter alia*, to four (4) months of imprisonment. (Exhibit #4).

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 evidence established that Respondent was convicted, upon a guilty plea, of a crime under federal law. Accordingly, the Hearing Committee voted to sustain the Specification of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that the summary suspension of Respondent's medical license should be lifted. His license should then be suspended for one (1) year, with the suspension stayed, and Respondent placed on probation for a period of one (1) year from the effective date of this Determination and Order. The terms of probation should also include a requirement that Respondent's medical practice be monitored, during the period of probation. Respondent should also be required to complete a continuing medical education course on medical/professional ethics. In addition, a restriction shall be placed on his license to prohibit Respondent from owning or administering a medical practice, or Article 28

facility. The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

This is a very unusual case. Although convicted of a federal crime, the United States Attorney for the Southern District of New York wrote a letter to the Director of the State Office for Professional Medical Conduct, seeking leniency for Respondent. (Exhibit #4). The letter sets out the facts and circumstances surrounding Respondent's attempt to bribe then-State Senator Carl Kruger, in an effort to prevent the closure of Parkway Hospital in Queens.

Respondent purchased the financially distressed hospital in 2004. He then invested large sums of money into the facility (in excess of \$28 million), but was forced to declare bankruptcy in 2005. In 2008, the New York State Commission on Health Care Facilities in the 21st Century (also known as the "Berger Commission") determined that Parkway Hospital must be closed. (Exhibit #4). Sometime during the summer of 2008, Senator Kruger and a co-conspirator solicited a \$60,000 bribe from Respondent, to be paid in the form of radiology services provided by the co-

conspirator's firm. (Exhibit #4). Not surprisingly, there was no attempt to save Parkway, and the hospital closed.

The decision to pay a bribe in an attempt to keep the hospital open was a fool's choice and a colossal ethical lapse. Respondent knew full well that it was wrong, and did it anyway. His actions were even more inexplicable, given that in the past he had voluntarily approached federal prosecutors when another corrupt politician sought to solicit bribes. (Exhibit #4).

The Hearing Committee was impressed by Respondent's expression of remorse, and takes note of the supportive testimony which he received from several former colleagues. All testified to his clinical abilities and his devotion to the well-being of his patients. The fact that Respondent's criminal conduct did not directly impact the practice of medicine, or place any patients at risk does mitigate the need for a revocation of his medical license. We are confident that the chance of recidivism is extremely low.

Nevertheless, a significant sanction is warranted, both in recognition of the seriousness of the crime, and the importance of sending a message of deterrence to the rest of the medical profession. The need for such a message was amply borne out by the testimony of the various witnesses who testified on Respondent's behalf. Each was aware of the nature of his

criminal actions. Yet **not one** was willing or able to say that they would not engage in similar criminal conduct, if presented with the same set of circumstances.

The Hearing Committee unanimously determined that upon removal of the summary suspension imposed by the Commissioner, Respondent's license shall be suspended for a period of one year. The suspension will be stayed, and Respondent placed on probation for one year. Respondent shall also be required to complete a continuing medical education course on medical ethics, acceptable to the Director of the Office of Professional Medical Conduct, during the term of probation. Given that Respondent has been out of active medical practice for some time, the Committee further determined that his medical practice shall also be monitored during the term of probation.

Lastly, the Committee determined that a restriction shall be placed on Respondent's license to prohibit him from owning or administering a medical practice, or Article 28 facility. This will allow Respondent to continue practicing medicine without getting involved in the management side of the profession again. Even his own witness, Steven Arnold, M.D., acknowledged that as an administrator, Respondent had difficulty balancing his care and compassion for patients with the business needs of the organization. By taking away the temptation of re-engaging in

the administrative process, Respondent will be able to focus his energies on providing medical care for his patients.

Under the totality of the circumstances, the Hearing Committee believes that the sanctions imposed strike the appropriate balance between the need to punish Respondent and deter future conduct by others in the profession, while providing an opportunity for Respondent's rehabilitation.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is **SUSTAINED**;

2. The Summary Suspension of Respondent's medical license, imposed by the Commissioner's Order and Notice of Referral Proceeding be and hereby is lifted;

3. Respondent's license to practice medicine in New York State shall be **SUSPENDED** for a period of **ONE (1) YEAR** from the effective date of this Determination and Order. Said suspension shall be **STAYED** and Respondent placed on **PROBATION** for a term of **ONE (1) YEAR** from the effective date of this Determination and Order. The complete terms of probation are set forth in Appendix II of this Determination and Order and incorporated therein;

4. A restriction shall be and hereby is placed on

TO: Michael G. Bass, Esq.
Assistant Counsel
New York State Department of Health
Corning Tower - Room 2512
Albany, New York 12237

William Comiskey, Esq.
Hodgson Russ, LLP
677 Broadway
Albany, New York 12207

Robert Joseph Aquino, M.D.
REDACTED

APPENDIX I

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

IN THE MATTER
OF
ROBERT JOSEPH AQUINO, M.D.
CO-12-01-0185A

STATEMENT
OF
CHARGES

ROBERT JOSEPH AQUINO, M.D., Respondent, was authorized to practice medicine in New York state on June 12, 1986, by the issuance of license number 166358 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 3, 2012, in United States District Court, Southern District of New York, Respondent pled guilty to Conspiracy to Commit Bribery, in violation of Title 18 of the United States Code Sections 1952(a)(3) and 371, a felony. On or about May 1, 2012, in United States District Court, Southern District of New York, Respondent was sentenced, *inter alia*, to four (4) months of imprisonment.

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, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Sept 13*, 2012
Albany, New York

REDACTED

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

APPENDIX II

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway Suite 355, Albany, New York 12204; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the 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 or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall enroll in and complete a continuing education program in the area of medical/professional ethics. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the year of probation.
9. Within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
10. Respondent shall maintain medical malpractice coverage with limits no less than \$2million per occurrence and \$6million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
11. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order, and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.