

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

-----X  
IN THE MATTER

OF

DANNY TAMIR, M.D.  
CO-10-11-7071-A  
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:  
: DECISION ON  
:  
: MOTION  
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Respondent filed a Notice of Motion, dated January 18, 2012, seeking to dismiss the Statement of Charges, dated August 25, 2011, which were served on him by the Department. The Petitioner filed an Affirmation in Opposition to the Notice of Motion, dated February 14, 2012.

Factual Background

The basic facts are not in dispute in this matter. Respondent was an unlicensed PGY1 resident at Staten Island University Hospital during the period July 2, 2007 through July 1, 2008. On or about November 17, 2010, Respondent was found guilty, in Supreme Court, Richmond County, of Forgery in the Second Degree, in violation of New York Penal Law §170.10(5). This is a class D felony. Respondent was subsequently sentenced to five years' probation, and \$375.00 in fees and surcharges.

Respondent's Arguments in Support of the Motion

Respondent's arguments in support of the motion to dismiss can be briefly summarized as follows:

The State Board for Professional Medical Conduct ("Board") does not have jurisdiction over Respondent because he was not a licensee within the meaning of Public Health Law §230 when the criminal violation occurred. Ultimately, resolution of the

question of Respondent's character and fitness for medical licensure rests with the New York State Department of Education, in the event that Respondent ever seeks a New York medical license.

Department's Arguments in Opposition to the Motion

The Department's arguments can be briefly summarized as follows:

Public Health Law §230.7(a) defines a licensee as including medical residents, and the statute does not limit itself to current residents. For support of this position, Petitioner cites the Matter of Lisa Jacobs, M.D. (BPMC No. 03-184), wherein a Hearing Committee ruled that the Respondent, a former medical resident was subject to the Board's jurisdiction regardless of whether she was a current or former medical resident.

Discussion

In the context of a motion to dismiss, "the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference and determine whether the facts as alleged fit within any cognizable legal theory". Arnav Industries, Inc. Retirement Trust v. Brown, Raysman, Millstein, Felder & Steiner, LLP, 96 N.Y.2d 300, 303 (2001).

Pursuant to Public Health Law §230, the State Board for Professional Medical Conduct is authorized to conduct disciplinary proceedings against licensees accused of

professional misconduct. Public Health Law §230.7(a) defines "licensee" as a "physician, including a physician practicing under a limited permit, a medical resident, physician's assistant and specialist's assistant".

The fact of Respondent's criminal conviction is beyond dispute. The critical question is whether Respondent was a medical resident within the meaning of Public Health Law §230.7(a) when the criminal conduct occurred. Petitioner's reliance on Matter of Lisa Jacobs, M.D. is misplaced. The Hearing Committee expressly found that Jacobs was actually employed as a medical resident at the time of the alleged violations. (Matter of Jacobs, at p. 10). In the instant case, there is no evidence that Respondent was employed as a medical resident in New York or any other jurisdiction when the criminal conduct took place.

A ruling in favor of Petitioner in this case would effectively extend the Board's jurisdiction to anyone who had ever been a medical resident in New York State, regardless of whether that individual was practicing medicine at the time of any alleged misconduct. This would be an overreach of the Board's authority.

Were I to hold that the Board has jurisdiction to proceed, the only viable penalty a Hearing Committee could impose would be a limitation on Respondent's ability to obtain a New York medical license at some hypothetical time in the future. The matter of Respondent's moral character and fitness to ever receive a New York medical license lies within the province of the New York

State Department of Education, and is a subject for another day.

Based upon the foregoing, the I find that Respondent is not a licensee within the clear meaning of Public Health Law §230.7(a), and that Respondent's Motion to Dismiss for lack of jurisdiction is hereby GRANTED.

DATED: Troy, New York  
February 14, 2012

REDACTED

LARRY G. STORCH  
ADMINISTRATIVE LAW JUDGE

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