



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

December 3, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

Robert S. Fink, Esq.
Kostelanetz & Fink, LLP
230 Park Avenue
New York, New York 10169

John Milici, M.D.
880 Fifth Avenue
New York, New York 10021

RE: In the Matter of John Milici, M.D.

Dear Ms. Kaplan, Mr. Fink and Dr. Milici:

Enclosed please find the Determination and Order (No. 96-287) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

RECEIVED
DEC 9 1996
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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,

Tyrone T. Butler nm

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

**IN THE MATTER
OF
JOHN MILICI, M.D.**

**DETERMINATION
AND
ORDER
BPMC-96-287**

A Notice of Hearing and Statement of Charges, both dated July 9, 1996, were served upon the Respondent, **JOHN MILICI, M.D.** **STANLEY GITLOW, M.D.**, (Chair), **JOHN H. S. HOLLOMAN, JR., M.D.** and **DENNIS HORRIGAN**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 26, 1996. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **MARCIA KAPLAN, ESQ.**, Associate Counsel of Counsel. The Respondent was represented by Kostelanetz & Fink, LLP, by Robert S. Fink, Esq., of counsel. 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 Section 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 Section 6530 (9) (a)(ii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

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. Respondent was authorized to practice medicine in New York State on February 20, 1960 by the issuance of license number 083810 by the New York State Education Department.
(Pet. Ex. #2)

2. On or about November 2, 1995, Respondent was convicted of Conspiracy to Defraud the Internal Revenue Service, in violation of 18 USC 371, and Personal Income Tax Evasion, in violation of 26 USC 7201 and 18 USC Sec. 2, and sentenced to probation for three years.

with terms of probation including a six month period of home confinement and 300 hours of community service, and a \$10,000 fine.

3. The facts underlying the Conspiracy to Defraud the Internal Revenue Service conviction include that between 1982 and January 1993, Respondent conspired with his accounting firm to evade a substantial part of the income tax owed by him for the years 1985-1992. The conspiracy involved creating false deductions through payments made to sham accounts named to create the false appearance of bona fide charities, business associates and business organizations. Approximately 90% of the deposited funds in the sham accounts were spent at Respondent's direction to pay for his personal expenses. The payments to the sham accounts were reported as bona fide business and charitable deductions on Respondent's personal income tax returns for 1982-1991, totalling approximately \$530,849.88. Respondent signed his individual federal income tax returns for 1982-1991 knowing that those returns falsely and fraudulently understated his taxable income. Specifically, on or about June 21, 1982, Respondent sent his accounting firm checks payable to a sham account called "R. Williams", on or about January 13, 1993, Respondent sent his accounting firm checks payable to various sham accounts, and on or about September 28, 1992, Respondent signed his federal tax return for 1991.
4. The facts underlying the Personal Income Tax Evasion conviction include that from in or about January 1988-September 28, 1992, Respondent willfully attempted to evade a substantial part of the income tax owed by him for 1988-1991 by filing false and fraudulent U.S. Individual Income Tax returns, which contained bogus charitable and business deductions, and which falsely understated his taxable income, as specified.

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 Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was convicted in Federal Court for conspiracy to defraud the Internal Revenue Service and Personal Income Tax Evasion. Section 6530(9)(a)(ii) defines professional misconduct as having being convicted of committing an act constituting a crime under federal law. As a result, the Hearing Committee voted to sustain the Specification of professional misconduct contained within 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 Respondent's license to practice medicine in New York State should be suspended for a three (3) year period, said suspension to be stayed, and that Respondent be placed on probation during said three (3) year period of suspension. The complete terms of probation are attached to this Determination and Order in Appendix II. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent openly acknowledged his wrongdoing to the Hearing Committee. (T. 89-90) Respondent testified that as part of his federal probation, he is working as a consulting psychiatrist at the Center for Community Alternatives (CCA), a community clinic. (T.90-92) A substance abuse counselor at CCA testified that if they were to lose Respondent's services, a lot of the women patients would suffer a relapse in their mental condition, or end up in jail or on the street. (T. 35, 40) Additional testimony and affidavits from colleagues state that Respondent is respected for his

knowledge of his profession, his commitment to teaching and dedication to patient care. (T. 21, Resp. A, B)

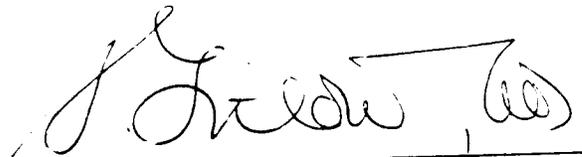
Although Respondent was convicted of tax fraud and evasion, the Hearing Committee believes that Respondent has learned a lesson from his criminal experience. The Hearing Committee believes that Respondent presently provides a valuable service to the community as stated by the witnesses testifying on his behalf. The Hearing Committee notes that Respondent has been fined, and placed on probation by the federal court for 3 years. The Hearing Committee further notes that no patients were harmed as a result of Respondent's criminal activities. Therefore, the Hearing Committee finds that revocation is not warranted in this instance and that a three (3) year monitoring and probation will adequately protect the public.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**.
2. Respondent's license to practice medicine in the State of New York be , and hereby is, **SUSPENDED** for a period of three (3) years from the effective date of this Determination and Order. The term of the suspension shall be stayed, and Respondent shall be placed on probation in accordance with the terms of probation contained in Appendix II which is attached to this Determination and Order and incorporated herein.

Dated: New York, New York
11/29 , 1996



STANLEY GITLOW, M.D. (Chair)

**JOHN H. S. HOLLOMAN, JR., M.D.
DENNIS HORRIGAN**

(10)

TO: Marcia Kaplan, Esq.
Associate Attorney
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

Robert S. Fink, Esq.
Kostelanetz & Fink, LLP
230 Park Avenue
New York, New York 10169

John Milici, M.D.
880 Fifth Avenue
New York, New York 10021

APPENDIX I

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

IN THE MATTER
OF
JOHN MILICI, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: JOHN MILICI, M.D.
880 Fifth Avenue
New York, N.Y. 10021
10 Old Jackson Ave.
Hastings-On-Hudson, N.Y. 10706

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on August 6, 1996, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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. You may produce evidence or sworn testimony on your behalf. Such evidence 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 which 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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.

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 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: New York, New York
July 7, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
JOHN MILICI, M.D.

STATEMENT
OF
CHARGES

JOHN MILICI, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 20, 1960, by the issuance of license number 083810 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about November 2, 1995, Respondent was convicted of Conspiracy to Defraud the Internal Revenue Service, in violation of 18 USC 371, and Personal Income Tax Evasion, in violation of 26 USC 7201 and 18 USC Sec. 2, and sentenced to probation for three years, with terms of probation including a six month period of home confinement and 300 hours of community service, and a \$10,000 fine. The facts underlying the Conspiracy to Defraud the Internal Revenue Service conviction include that between 1982 and January 1993, Respondent conspired with his accounting firm to evade a substantial part of the income tax owed by him for the years 1985 -1992. The conspiracy involved creating false deductions through payments made to sham accounts named to create the false appearance of bona fide charities, business associates and business organizations. Approximately 90% of the deposited funds in the sham accounts were spent at Respondent's direction to pay for his personal expenses. The payments to the sham accounts were reported as bona fide business and charitable deductions on Respondent's personal income tax returns for 1982-1991, totalling approximately

\$530,849.88. Respondent signed his individual federal income tax returns for 1982-1991 knowing that those returns falsely and fraudulently understated his taxable income. Specifically, on or about June 21, 1982, Respondent sent his accounting firm checks payable to a sham account called "R. Williams", on or about January 13, 1993, Respondent sent his accounting firm checks payable to various sham accounts, and on or about September 28, 1992, Respondent signed his federal tax return for 1991. The facts underlying the Personal Income Tax Evasion conviction include that from in or about January 1988-September 28, 1992, Respondent willfully attempted to evade a substantial part of the income tax owed by him for 1988-1991 by filing false and fraudulent U.S. Individual Income Tax returns, which contained bogus charitable and business deductions, and which falsely understated his taxable income, as specified.

SPECIFICATION OF CHARGES

FEDERAL CRIMINAL CONVICTION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1996) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraph A.

DATED: July 7, 1996
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II
TERMS AND CONDITIONS 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 imposed by law and by his profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit prompt (within 20 days) written notification to the Board, addressed to the Director, office of Professional Medical conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the Office of Professional Medical Conduct ("OPMC") in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York State shall toll the probationary period, which shall be extended by the length of residency or practice outside New York State.

5. Respondent shall have quarterly meetings with an employee or designee of the OPMC during the period of probation. During these quarterly meetings Respondent's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.

6. Respondent shall have quarterly meetings with a monitoring physician who shall review Respondent's **private** practice. This monitoring physician shall review randomly selected medical records and evaluate whether Respondent's private practice correspond with generally accepted standards of medical practice. This monitoring physician shall be selected by Respondent and is subject to the approval of the Director of the OPMC. Respondent shall not practice medicine as a physician until an acceptable monitoring physician is approved by the Director.

7. Respondent shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms and conditions of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the OPMC at the address indicated above.

8. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice medicine as a physician in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

9. If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State in accordance with these terms of probation the Determination and Order of the Board for professional Medical Conduct; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant

10. Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected) to verify compliance with the term(s) and condition(s) of probation and accepted standards of medical practice.