



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

October 9, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Quist
Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

David Martin Morrow, M.D.
[REDACTED]

David Martin Morrow, M.D.
[REDACTED]

David Martin Morrow, M.D.
[REDACTED]

David Martin Morrow, M.D.
[REDACTED]

David Martin Morrow, M.D.
[REDACTED]

RE: In the Matter of David Martin Morrow, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 18-218) 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 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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., 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,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:
Enclosure

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

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IN THE MATTER
OF
DAVID MARTIN MORROW, M.D.

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X
DETERMINATION
AND
ORDER
18-218

A hearing was held on August 16, 2018, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to Public Health Law (PHL) § 230(10)(e), **Lyon M. Greenberg, M.D., Chairperson, Jose M. David, M.D., and Paul Lambiase**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Matthew C. Hall**, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by **David Quist, Esq.** A Notice of Referral Proceeding and Statement of Charges dated June 4, 2018, were duly served upon **David Martin Morrow, M.D.** (Respondent), who did not appear at the hearing.

The Hearing Committee received and examined documents from the Department (Exhibits 1-9). The Respondent did not appear and did not offer any documents into evidence. A stenographic reporter prepared a transcript of the proceeding.

After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charges that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9)(a)(ii) and § 6530(9)(d), and that the penalty of revocation of his medical license is appropriate.

BACKGROUND

The Department brought this case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii) for "having been convicted of committing an act constituting a crime under federal law." The Respondent is also charged with 6530(9)(d) for "[h]aving his...license to practice medicine revoked, suspended or having other disciplinary action taken...where the conduct resulting in the revocation, suspension or other disciplinary action involving the license...would, if committed in New York state, constitute professional misconduct under the laws of New York state." Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. David Martin Morrow, M.D., the Respondent, was licensed by the New York State Education Department to practice medicine on May 30, 1986, by the issuance of license number 166238. (Ex. 3).
2. The Respondent was also licensed to practice medicine in the State of California. On September 2, 2015, in the United States District Court for the Central District of California, Southern Division, a Grand Jury "True Billed" a twenty-six-count indictment against the Respondent, primarily regarding fraudulent acts by the Respondent in his practice as a cosmetic surgeon in the state of California. (Ex. 4).

3. According to the indictment, the Respondent used his ambulatory surgery center, The Morrow Medical Group (TMI), to bill more than "\$50,000,000 to insurance companies for cosmetic procedures by fraudulently representing that those procedures were medically necessary." (Ex. 4).

4. The Respondent would bill "individual procedures, such as abdominal surgery that lasts two hours, to insurance companies for as much as approximately \$100,000." (Ex. 4).

5. The Respondent would lure patients by telling them they could use their union health care benefit programs to pay for cosmetic procedures such as "tummy tucks, breast lifts, liposuction," etc. (Ex. 4).

6. Based on these billings, insurance companies paid out "more than \$20,000,000 for procedures that were cosmetic." (Ex. 4).

7. The Respondent used bank accounts that he opened to "siphon off more than "6,500,000 in income from his fraudulent scheme..., which he failed to report to his tax return preparer." (Ex. 4).

8. On or about February 16, 2016, the Respondent signed a plea agreement, admitting to the factual basis for Counts 21 and 22 in the indictment, conspiracy to commit mail fraud and making or subscribing a false tax return. The Respondent admitted that the "loss from this scheme is valued at \$3,491,053.65." (Ex. 7).

9. On October 2, 2107, the Respondent was sentenced *in absentia* for his guilty pleas to Counts 21 and 22 of the indictment." (Ex. 7).

10. The Respondent was sentenced to 240 months in prison, followed by three years of supervised released thereafter, restitution and mental health treatment." (Ex. 7).

11. Based on the above facts, the Executive Director of the Medical Board of California (Board), filed an accusation against the Respondent. (Ex. 7).

12. The Board served by Certified Mail, a copy of the "Accusation, Notice of Defense, Request for Discovery," and other documents to the Respondent's address of record with the Board. (Ex. 7).

13. Shortly thereafter, the aforementioned documents were returned by the U.S. Postal Service marked, "Return to Sender, Not Deliverable as Addressed, Unable to Forward." (Ex. 7).

14. After several attempts to serve the Respondent, the documents were again returned undelivered, and on the documents, the words, "Fled the Country" were written. (Ex. 7).

15. Accordingly, the Board found the Respondent to be in default and his license to practice medicine in the state of California was revoked. (Ex. 7).

HEARING COMMITTEE DETERMINATIONS

Regarding the first specification, after listening to testimony and reviewing the records obtained from the United States District Court for the Central District of California, the Hearing Committee unanimously determined (3-0) that, as alleged in the Statement of Charges, the Respondent violated Educ. Law § 6530(9)(a)(ii), which defines professional misconduct, in pertinent part as:

9.(a) Being convicted of committing an act constituting a crime under... (ii) federal law.

The Respondent pled guilty to and was convicted of one count of Conspiracy to Commit Mail Fraud, a felony in violation of 18 USC section 1349. He also pled guilty to and was convicted of one count of Making and Subscribing to False Income Tax Return. This is also a felony in violation of 26 USC 7206(1). As a result of these convictions, the Respondent was sentenced, in total, to imprisonment for a term of 240 months, three years supervised release, subject to terms, payment of restitution in the amount of approximately \$14, 026,000, payment of a \$50,000 fine, payment of \$200 special assessment, and other terms. The Hearing Committee concludes that the conduct which led to the Respondent's sentencing, would constitute professional misconduct under the laws of New York State as defined in Educ. Law § 6530(9)(a)(ii).

Regarding the second specification, after listening to testimony and reviewing the records obtained from the Medical Board of California, Department of Consumer Affairs, state of California, the hearing committee unanimously determined (3-0) that, as alleged in the Statement of Charges, the Respondent violated Educ. Law § 6530(9)(d), which defines professional misconduct, in pertinent part as:

9.(d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken...or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action...if committed in New York state, would constitute professional misconduct under the laws of New York state.

The Petitioner recommended revocation of the Respondent's license. Although duly served with Notice of Referral Proceeding in conformity with PHL 230(10)(d), the Respondent failed to appear and failed to offer any evidence or argument to persuade the Committee to a different conclusion. The Hearing Committee unanimously (3-0) determined that revocation of the Respondent's license pursuant to PHL 230-a(4) is an appropriate penalty.

ORDER

IT IS HEREBY ORDERED THAT:

1. All specifications of professional misconduct, as set forth in the Statement of Charges, are sustained;
2. The Respondent's license to practice medicine in the State of New York is **REVOKED**.
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).

Dated: Oct 4th 2018, New York

2018

[Redacted]

Lybn M. Greenberg, M.D.
Chairperson

Jose M. David, M.D.
Paul J. Lambiase

David Quist
Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
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David Martin Morrow, M.D.

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David Martin Morrow, M.D.

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APPENDIX I

IN THE MATTER

OF

DAVID MARTIN MORROW, M.D.

STATEMENT

OF

CHARGES

DAVID MARTIN MORROW, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 30, 1986, by the issuance of license number 166238 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 2, 2017, Respondent was sentenced in the United States District Court for the Central District of California, resulting from a conviction and guilty plea, to one count of Conspiracy to Commit Mail Fraud, in violation of 18 USC section 1349, and one count of Making and Subscribing to a False Income Tax Return, in violation of 26 USC 7206(1), both felonies. On or about January 25, 2018, Respondent's sentence in the same court was reiterated, with the addition of ordered restitution.

B. Respondent was sentenced, in total, to imprisonment for a term of 240 months, three years' supervised release, subject to terms, payment of restitution in the amount of approximately \$14,026,000, payment of a \$50,000 fine, payment of a \$200 special assessment, and other terms.

C. Respondent's license to practice medicine in the state of California was revoked pursuant to a Default Decision and Order of the Medical Board of California (Board), dated December 14, 2017 and effective January 12, 2018. The Board's action was prompted by Respondent's federal criminal conviction.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Federal)

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

1. The facts in Paragraphs A and B.

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if

committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(9(a)(ii)) as alleged in the facts of the following:

2. The facts in Paragraphs A, B and C.

DATE: April 23, 2018
Albany, New York


MICHAEL A. HISER, ESQ.
Deputy Counsel
Bureau of Professional Medical Conduct