

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**  
2 **OF THE STATE OF NEVADA**

3 \* \* \* \* \*

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5  
6 **In the Matter of Charges and** )  
7 **Complaint Against** )  
8 **ROBERT JOSEPH AQUINO, M.D.,** )  
9 **Respondent.** )

Case No. 14-35576-1

**FILED**

**JAN -7 2014**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

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12 **COMPLAINT**

13 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners  
14 (Board), composed at the time of filing of Theodore B. Berndt, M.D., Chairman,  
15 Valerie J. Clark, BSN, RHU, LUTCF, Member, and Michael J. Fischer, M.D., Member, by and  
16 through Bradley O. Van Ry, Board General Counsel and attorney for the IC, having a reasonable  
17 basis to believe that Robert Joseph Aquino, M.D., (Respondent), has violated the provisions of  
18 Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter  
19 630, collectively the Medical Practice Act (MPA), hereby issues its formal Complaint, stating the  
20 IC's charges and allegations, as follows:

21 1. Respondent has been licensed, by the Board with an administrative license only,  
22 since March 5, 2010 (License No. 13440), pursuant to the provisions of the MPA. Respondent is  
23 currently in inactive status. Respondent's inactive status began on June 30, 2011, after being on  
24 active status from initial licensure up through June 29, 2011.

25 2. Respondent was also licensed in the state of New York at the time of the incident  
26 complained of in this matter.

27 3. On or about March 7, 2013, the State of New York, Department of Health, State  
28 Board for Professional Medical Conduct, entered a Determination and Order (Order) where

1 Respondent was placed on probation for a period of one (1) year from the effective date of the  
2 Order. A copy of the Order is attached hereto as Exhibit "1." Simultaneously, Respondent's  
3 license to practice medicine in New York State was suspended and stayed for the same one (1)  
4 year time period.

5 4. Certain terms and conditions of probation were ordered, including that Respondent  
6 was barred from owning or administering a medical facility.

7 **Count I**

8 5. All of the above allegations in the above paragraphs are hereby incorporated as if  
9 fully set forth herein.

10 6. NRS 630.301(3) provides that any disciplinary action, including, without  
11 limitation, the revocation, suspension, modification or limitation of a license to practice any type  
12 of medicine, taken by another state is grounds for initiating discipline against a licensee.

13 7. The disciplinary action against Respondent, including, but not limited to, the  
14 probation and related conditions levied against Respondent by New York State on March 7, 2013  
15 constitutes a violation of the provisions of NRS 630.301(3).

16 8. By reason of the foregoing, Respondent is subject to discipline by the  
17 Board as provided in NRS 630.352.

18 **Count II**

19 9. All of the allegations contained in the above paragraphs are hereby incorporated by  
20 reference as though fully set forth herein.

21 10. NRS 630.301(9) provides that the engaging in conduct that brings the medical  
22 profession into disrepute is grounds for initiating disciplinary action against a licensee.

23 11. As demonstrated by, but not limited to, the above-outlined facts, Respondent's acts  
24 leading to the imposition of probation, and the imposition of probation by New York state, bring  
25 the medical profession into disrepute.

26 12. By reason of the foregoing, Respondent is subject to discipline by the Board as  
27 provided in NRS 630.352.

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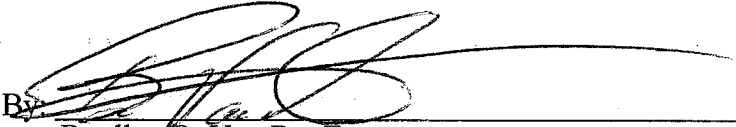
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**WHEREFORE**, the Investigative Committee prays:

1. That the Board give Respondent notice of the charges herein against him and give him notice that he may file an answer to the Complaint herein as set forth in NRS 630.339(2) within twenty (20) days of service of the Complaint;
2. That the Board set a time and place for a formal hearing after holding an Early Case Conference pursuant to NRS 630.339(3);
3. That the Board determine what sanctions it agrees upon to impose if it finds and concludes that there has been a violation or violations of the MPA committed by Respondent;
4. That the Board make, issue and serve on Respondent its findings of fact, conclusions of law and order, in writing, that includes the sanctions imposed; and,
5. That the Board take such other and further action as may be just and proper in these premises.

DATED this 1<sup>st</sup> day of January, 2014.

INVESTIGATIVE COMMITTEE OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By   
Bradley O. Van Ry, Esq.  
General Counsel  
Attorney for the Investigative Committee

VERIFICATION

1 STATE OF NEVADA )  
2 : ss.  
3 COUNTY OF WASHOE )

4 Theodore B. Berndt, M.D., hereby deposes and states under penalty of perjury under the  
5 laws of the state of Nevada that he is the Chairman of the Investigative Committee of the  
6 Nevada State Board of Medical Examiners that authorized the foregoing Complaint against the  
7 Respondent herein; that he has read the foregoing Complaint; and that based upon information  
8 discovered during the course of the investigation into a complaint against Respondent, he believes  
9 the allegations and charges in the foregoing Complaint against Respondent are true, accurate and  
10 correct.

11 Dated this 6<sup>th</sup> day of January, 2014.

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Theodore B. Berndt, M.D.

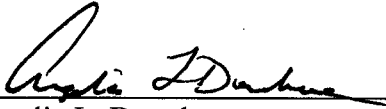
OFFICE OF THE GENERAL COUNSEL  
Nevada State Board of Medical Examiners  
1105 Terminal Way #301  
Reno, Nevada 89502  
(775) 688-2559

CERTIFICATE OF SERVICE

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 7<sup>th</sup> day of January 2014; I served a filed copy of COMPLAINT & FINGERPRINT INFORMATION, via USPS e-certified mail to the following:

Robert Aquino, M.D.  
2 Copperfield Lane  
Glen Head, NY 11545

Dated this 7<sup>th</sup> day of January, 2014.



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Angelia L. Donohoe  
Legal Assistant

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# **EXHIBIT**

**1**

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 : BPMC #13-67  
-----X

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 21<sup>st</sup> 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.  
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Robert Joseph Aquino, M.D.

REDACTED