

4. The case was assigned to the South Investigative Committee (“Committee”) as docket number MPS 051-0518.

5. In a November 30, 2018 letter, the Department of Taxes (“Department”) requested that the Board schedule a hearing to suspend or revoke Respondent’s license to practice his medical profession due to his failure to remain in good standing. *See Affidavit of Investigator Scott Frennier ¶ 4; See also 32 V.S.A. § 3113(f)* (“Upon written request by the Commissioner and after notice and hearing to the licensee as required under any applicable provision of law, an agency shall revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person if the agency finds that taxes administered by the Commissioner have not been paid and that the taxpayer’s liability for such taxes is not under appeal.”).

6. An individual is in “good standing” with respect to any and all taxes payable only when:

- a. “no taxes are due and payable and all returns have been filed;
- b. the liability for any taxes due and payable is on appeal;
- c. the person is in compliance with a payment plan approved by the Commissioner; or
- d. in the case of a licensee, the agency finds that requiring immediate payment of taxes due and payable would impose

an unreasonable hardship.”²

See 32 V.S.A. § 3313(g) (emphasis added).

7. As of the present date, Respondent is not in compliance with his obligations to file returns and pay income taxes and withholding as required for both business income and personal income. See *Affidavit of Tax Director of Compliance Lee Gable* ¶ 4.

8. Respondent has not filed the requisite Vermont tax returns for personal income for the years 2011, 2012, 2013, 2014, 2015, 2016, and 2017, or paid the entire tax obligations owed as assessed, except for one payment in June 2015 in the amount of \$19,173.46. He has not made any payments toward his outstanding balance since that time. *Id.* at ¶ 5.

9. Respondent has not filed the requisite Vermont tax returns for business income for the years 2013, 2014, 2015, 2016, and 2017. He has not paid the business tax obligations owed, except for one payment in November 2016 in the amount of \$7,811.06. He has not made any payment toward his outstanding balance since that time. *Id.* at ¶ 6.

10. As of November 2, 2018, Respondent owed approximately \$156,713.29 as an outstanding balance related to unpaid Vermont income taxes for each year beginning in 2011. *Id.* at ¶ 13.

² Whether or not immediate payment of a tax obligation would constitute undue hardship depends on the sum owed in taxes. Unless and until returns are filed and it is determined how much, if any, tax is owed to the State of Vermont, it is impossible to make a determination as to what constitutes an unreasonable hardship. See *Gable Aff.* ¶ 9.

11. To date, Respondent has not requested an extension of time to file any of his outstanding personal income tax returns or business income tax returns. *See Gable Aff.* ¶ 9.

12. At present, Respondent's outstanding liability for both personal and business income taxes owed is not on appeal pursuant to 32 V.S.A. § 3113(g)(2). *Id.* at ¶ 11.

13. To date, Respondent has not requested a payment plan to pay toward his outstanding tax liability pursuant 32 V.S.A. § 3113(g)(3). *Id.*

14. In a June 14, 2018 letter, the Board notified Respondent of the unprofessional conduct investigation and requested a written response to the allegations. *See Frennier Aff.* ¶ 3.

15. To date, Respondent has not provided a written response to the allegations as requested in the June 14, 2018 letter, and on multiple subsequent occasions, or cooperated with the investigation. Since the investigation commenced, Board Investigator Scott Frennier has attempted to communicate with Respondent concerning the allegations on approximately sixteen (16) separate occasions. Respondent replied to Investigator Frennier on approximately two (2) occasions.³ *Id.*

16. In the first July 12, 2018 email reply to Investigator Frennier,

³ Mrs. Phipps, Respondent's spouse, replied to Investigator Frennier in an email on one (1) occasion, asking whether the Board received Respondent's written response, which the Board never received despite Investigator Frennier's repeated attempts. *See Frennier Aff.* ¶ 6.

Respondent wrote that he had not provided a written response, because he did not receive the June 14, 2018 letter. Investigator Frennier emailed Respondent an electronic copy of the letter on the following day. In the second – and final – email reply on July 13, 2018, Respondent wrote to Investigator Frennier that he had “no knowledge of anything from the Vermont State Tax Department regarding unresolved taxes” and that he would need to consult with his accountant. *See Frennier Aff.* ¶ 6.

17. The Department has provided extensive written communications and notices to Respondent to obtain outstanding tax returns and balances owed. *See Gable Aff.* ¶ 6. From November 13, 2015 to November 16, 2018, the Department sent at least twenty-nine (29) letters to Respondent notifying him that he failed to file returns for the applicable filing periods and/or he owed an outstanding balance for both personal and business income taxes. *Id.* at ¶ 13.

18. The Department also mailed numerous written notices to Respondent concerning the Department’s decision to submit his Vermont tax debt to the Federal Treasury Offset Program in an attempt to collect some amounts owed. The Department mailed communications to Respondent concerning withholding reconciliation. The Department also copied Respondent on several Notices of Tax Lien(s) filed at relevant town clerk offices. *Id.* at ¶ 14.

19. Pursuant to 32 V.S.A. § 3113(h), “Any person who knowingly

makes or subscribes any return, statement, or other document under this title which contains or is verified by an unsworn written declaration that is made under the pains and penalties of perjury and which is not true and correct as to every material matter shall be fined not more than \$10,000.00 and imprisoned not more than 15 years, or both.”

20. Respondent submitted four (4) separate applications to the Board to renew his medical license for the following years: 2012, 2014, 2016, and 2018. On each renewal application, Respondent claimed he was in good standing as to any taxes owed to the State of Vermont. *See Frennier Aff.* ¶ 8.

21. Each of the four (4) renewal applications contain a section titled “Regarding Taxes” that states the following related to good standing:

Title 32 [V.S.A.] § 3113 requires that: A professional license or other authority to conduct a trade or business shall not be issued or renewed unless the person certifies that he or she is in good standing with the Department of Taxes. “Good standing” means that no taxes are due and payable and all returns have been filed, the tax liability is on appeal, the taxpayer is in compliance with a payment plan approved by the Commissioner of Taxes, or the licensing authority determines that immediate payment of taxes would impose an unreasonable hardship. (32 V.S.A. § 3113).

Id.

22. In each of the four (4) renewal applications, Respondent answered “yes” in response to the question that requires an applicant to answer truthfully under the penalties of perjury whether he was in good standing, as stated below:

I hereby certify, under the pains and penalties of perjury, that I am in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont as of the date of this application (The maximum penalty for perjury is fifteen years in prison, a \$10,000.00 fine or both).

See Frennier Aff. ¶ 10.

23. On each of the four (4) application dates – October 2, 2012; October 12, 2014; November 11, 2016; and September 26, 2018 – Respondent answered “yes” to the following statement: “I certify that the information stated by me in this application is true and accurate to the best of my knowledge and that I understand providing false information or omission of information is unlawful and may jeopardize my license/certification/registration status.” *Id.* at ¶ 11.

II. State’s Allegations of Unprofessional Conduct

Count I

24. Paragraphs 1 through 23 above, are restated and incorporated herein by reference.

25. By one or more of the acts related to Respondent providing false information on his medical license renewal applications, Respondent violated 32 VSA § 3113(h), and thereby violated 26 V.S.A. § 1354(a)(27), when he knowingly provided information concerning his good standing regarding taxes on four (4) separate license renewal applications for the following

years: 2012, 2014, 2016, and 2018, as stated above in paragraphs 18 – 20, all of which Respondent verified by a written declaration that was made under the pains and penalties of perjury; that was not materially true and correct; and/or was materially false; and/or omitted material information on four (4) separate occasions.

26. Such conduct is unprofessional.

Count II

27. Paragraphs 1 through 23 above, are restated and incorporated herein by reference.

28. By one or more of the acts related to Respondent providing false information on his medical license renewal applications, Respondent violated 26 V.S.A. § 1354(a)(1) when he knowingly provided information concerning his good standing regarding taxes on four (4) separate license renewal applications for the following years: 2012, 2014, 2016, and 2018, as stated above in paragraphs 18 – 20, that was not materially true and correct; and/or was materially false; and/or omitted material information and, thereby, engaged in fraud or misrepresentation in applying for or procuring periodic renewal of a medical license on four (4) separate occasions.

29. Such conduct is unprofessional.

Count III

30. Paragraphs 1 through 23 above, are restated and incorporated herein by reference.

31. By one or more of the acts related to Respondent providing false information on his medical license renewal applications, Respondent violated 26 V.S.A. § 1398 when he knowingly provided false information on four (4) separate occasions concerning his good standing regarding taxes on four (4) separate license renewal applications for the following years: 2012, 2014, 2016, and 2018, as stated above in paragraphs 18 – 20, and, thereby, he obtained and/or sought to obtain practice in his medical profession by false or fraudulent representations.

32. Such conduct is unprofessional, as provided by 26 V.S.A. § 1354(a)(27), and constitutes grounds for revocation as provided by 26 V.S.A. § 1398.

Count IV

33. Paragraphs 1 through 23 above, are restated and incorporated herein by reference.

34. By one or more of the acts described above, Respondent violated 26 V.S.A. § 1354(a)(27) when he failed to comply with the following Vermont Board of Medical Practice Rules that govern the practice of medicine:

- a. Rule 7.3 provides that “Professionals have a continuing

obligation during each two-year renewal period to promptly notify the Board of any change to the answers on the initial or renewal application last filed with the Board....Failure to do so may subject the professional to disciplinary action by the Board.” When Respondent failed to file tax returns and pay the entire tax obligations owed as assessed for both business and personal income, since 2013 and 2011 respectively, he had an on-going duty throughout this time to contact the Board promptly regarding any change to his good standing status since submitting prior applications.

- b. Rule 35.2.1.3 provides that Respondent must provide a written response to the Board after receiving notice of a complaint. Respondent violated this rule when he refused to provide a written response to the complaint despite several extensions and opportunities to do so.
- c. Rule 36.2.1 provides that “[p]rofessionals are obligated to cooperate with the Board throughout an investigation.” Respondent violated this rule when he failed to provide a written response to the complaint and misled the investigator when he falsely denied receiving any notice of his tax liabilities from the Department of Taxes.

35. Such conduct is unprofessional.

Count V

36. Paragraphs 1 through 23 above, are restated and incorporated herein by reference.

37. By one or more of the acts described above, Respondent violated 26 V.S.A. § 1354(a)(34) when he failed to provide the Board such information it reasonably requested in furtherance of its statutory duties. Respondent violated the statute when he refused to provide a written response to the complaint despite several extensions and ample opportunities to do so.

38. Such conduct is unprofessional.

WHEREFORE, Petitioner, State of Vermont, moves the Vermont Board of Medical Practice pursuant to 32 V.S.A. § 3113(b) and (f), and/or 26 V.S.A. §§ 1361 and/or 1398 to (a) **suspend or revoke** or take such other disciplinary action as it deems proper related to the Vermont medical license of Respondent, Stephen J. Phipps, M.D.; and (b) **condition** Respondent's Vermont medical license, should it later be removed from suspension or revocation status, to require that Respondent remain in continuing "good standing" as to any and all Vermont taxes due and payable and expressly warning that any future failure to do so will subject Respondent to possible revocation of his license to practice medicine.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
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Dated at Montpelier, Vermont this 24th day of January, 2019.

STATE OF VERMONT

THOMAS J. DONOVAN, JR
ATTORNEY GENERAL

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The foregoing Specification of Charges, filed by the State of Vermont, as to Stephen Phipps, M.D., Vermont Board of Medical Practice docket number MPS 051-0518, are hereby issued.

Dated at Burlington, Vermont this 28th day of January 2019

VERMONT BOARD OF MEDICAL PRACTICE

By: [Signature]
Secretary, Vermont Board of Medical Practice

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