

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: STEPHEN J. PHIPPS, M.D.) Docket No. MPS 051-0518
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ORDER

1. On June 5, 2019 the Vermont Board of Medical Practice considered the above-captioned matter. The State of Vermont was represented by Kassandra P. Diederich, Esq. Dr. Phipps appeared without counsel.
2. After considering the Hearing Committee Report from its hearing dated May 6, 2019, the Board accepted the Findings and Conclusions of that report (attached hereto as Exhibit A).
3. In accordance with the Findings of Fact and Conclusions of law, the Board does Order that the Respondent Stephen J. Phipps's Vermont medical license is hereby SUSPENDED pursuant to 32 VSA Sec. 3113(f) pending further order of the Board.
4. In the event that Respondent's license is reinstated pursuant to further order of the Board, his license shall be conditioned as follows:
 - a. Respondent shall remain in continuing "good standing" as to any and all Vermont taxes due and payable, and any future failure to do so will subject Respondent to possible revocation of his license to practice medicine.

- b. Before returning to the practice of medicine, Respondent shall undergo an evaluation of his physical and psychological fitness to engage in the practice of medicine.
 - c. Any and all additional conditions or restriction regarding Respondent's license and practice as determined to be reasonable by the Board.
5. Respondent shall be REPRIMANDED for the unprofessional conduct set forth above.
 6. This Order of suspension of licensure shall be deemed entered and effective at the time it is served personally on the Respondent or, if personal service cannot be effectuated, then by leaving copies at the Respondent's office or home with some person of suitable age and discretion.
 7. During the pendency of this SUSPENSION, and until further order of the Board, Respondent may NOT see patients, counsel patients, evaluate or assess patients, prescribe for patients, or hold himself out in any way as currently or validly licensed to practice medicine in the State of Vermont. Any such acts by Respondent would be deemed to be in violation of this Order and could subject Respondent to further sanctions.
 8. Board investigative staff are directed to monitor Respondent's compliance with this Order.
 9. The Respondent shall pay an administrative penalty of five thousand dollars (\$5,000.00) consistent with 26 VSA Sec. 1361(b). Payment shall be made to the "State of Vermont Board of Medical Practice" and shall be sent to the Board of Medical Practice Office, P.O. Box 70, Burlington, Vermont 05402-0070.

SO ORDERED.

W. Hoser

William K. Hoser, Chair of the Board

DATED: 6/6/19

ENTERED AND EFFECTIVE: 6/10/2019
(Date of Service)

EXHIBIT A

State Exhibit 16: Affidavit of Scott Frennier

State Exhibit 17: Four licensing renewal applications to Bd. Of Med. Practice by Dr. Phipps

The Hearing Committee of the Vermont Board of Medical Practice was constituted under Vermont Board of Medical Practice Rule 3.1 and 26 VSA Sec. 1355(b). Upon the evidence presented on May 6, 2019, the Committee makes the following findings, conclusions and proposed order and reports them to the Board of Medical Practice consistent with that rule and statute.

Findings of Fact

1. Stephen Jonathan Phipps (the “Respondent”) is a Medical Doctor, currently licensed in Vermont, with a specialty in Ophthalmology. His Vermont license is number 042.0010054. He has a practice in the area of St. Johnsbury, Vermont and Littleton, New Hampshire. (State Exhibit 17)
2. The Respondent has not filed personal income tax returns with the Vermont Department of Taxes for the years 2011-2017. The Respondent has not filed business income tax returns with the Vermont Department of Taxes for the years 2013-2017. The Respondent is in violation of his obligation to make quarterly estimated tax payments to the Vermont Department of Taxes during the years of 2011-2017. The Respondent is in violation of the Vermont tax law for failure to meet his withholding obligations. (State Exhibit 1)
3. Between November 13, 2013 and November 16, 2018, the Vermont Tax Department sent more than 29 letters of demand, letters of assessment, requests for information and returns, and statements of intent to seek professional license suspension. For the most part, the communications went unanswered. Collection attempts by the Vermont Department of Taxes were largely unsuccessful. (State Exhibit 1) According to the Vermont Tax Assistant Director of Compliance, the Respondent’s case was “atypical” because of the failure of Dr. Phipps to respond to the communications from the Vermont Tax Department.
4. Lisa Phipps (Spouse of the Respondent) filed a power of attorney with the Vermont Tax Department authorizing her to act on the account.
5. In May of 2018, the Vermont Department of Taxes alerted the Vermont Board of Medical Practice that the Respondent was a person “not in good standing” regarding his taxes. A person is in “good standing” with respect to Vermont taxes when: (1) no taxes are due and all returns have been filed; or (2) any tax liability is on appeal; or (3) an approved payment plan is in compliance; or (4) (for a licensee) the licensing agency finds that immediate payment of the taxes would cause an unreasonable hardship. 32 VSA Sec. 3313(g). The Respondent provided no information to show that he qualifies as a “person in good standing”. The Committee finds that the Respondent is not “a person in good standing” and has continuously been so since 2011 to the date of the hearing (May 6, 2019).
6. In November of 2018, the Vermont Tax Department requested by letter to the Board that the Board of Medical Practice schedule a hearing to suspend or revoke the license of the Respondent pursuant to 32 VSA Sec. 3113(f). (State Exhibit 6)

7. As of the date of the hearing before the Hearing Committee, the Respondent and his business owed over \$233,000.00 in Vermont taxes.
8. The Board initiated an investigation in June of 2018. The Board assigned Scott Frennier to investigate the matter. Mr. Frennier is a law enforcement officer and has experience investigating cases for the Vermont Board of Medical Practice.
9. In June of 2018, the Board (through Mr. Frennier) wrote to Dr. Phipps regarding the tax issue and requested that he respond within 21 days with an explanation of the circumstances. (State Exhibit 8). There was no response to this letter.
10. On July 12, 2018, Investigator Frennier sent an email to Dr. Phipps advising that the Board had received no response and that a "written response is mandatory". (State Exhibit 10).
11. Dr. Phipps responded to the email on July 12, 2018 by email saying that he had not received the letter. After the letter was resent to Dr. Phipps electronically, he responded on July 13, 2018 that he needed added time to respond and that he had "... no knowledge of anything from the Vermont State Tax Department regarding unresolved taxes." (State Exhibit 10) This statement by the Respondent is incredible in light of the Vermont Tax Department record of communications.
12. In response to the July 13, 2018, communication from Dr. Phipps, Mr. Frennier granted an extension of the time for response from Dr. Phipps until August 13, 2018 (in order for Dr. Phipps' to investigate his tax issues). Dr. Phipps said he would do so in his response. On September 10, 2018, with no response by Dr. Phipps, Mr. Frennier again sent an email to him asking him to respond. (State Exhibit 11)
13. On October 9, 2018, (with no Response from Dr. Phipps) Mr. Frennier sent a letter to Dr. Phipps home address advising that unless a response was received within 10 days, the Board would consider him to be "an uncooperative respondent" and that unprofessional conduct charges would be brought. (State Exhibit 12) This letter was returned as having an undeliverable address, but the letter was then re-sent by certified mail to his business address in Littleton, New Hampshire. On October 29, 2018 this letter was received by an agent of the Respondent, Rose Gearty. (State Exhibit 13)
14. On November 15, 2018, Mr. Frennier telephoned two telephone numbers for the Respondent which were of record in the Board of Medical Practice licensing file. The first telephone call received no answer. The person who answered at the second number did not identify themselves and hung up. This same sequence happened a second time. (State Exhibit 16)
15. On November 15, 2018, Mr. Frennier sent an email to the Respondent advising of reference of the matter to the Investigative Committee of the Board and allowing the Respondent to November 26, 2018 to respond.
16. On November 27, 2018, Lisa Fitch Phipps, who is understood to be the "Managing Partner" of Eye Associates of Northern New England and the spouse of the Respondent, sent to Mr. Frennier an email. In the email, Ms. Phipps indicated that she had mailed a written response to the Board "on behalf of Dr. Phipps". The email continued that if her letter had not been received by the Board, she would scan her letter and email a copy of it to Mr. Frennier. (State Exhibit 15). The letter which was promised by Ms. Phipps was never received by the Board or Mr. Frennier by ordinary mail or by email. On December 6, 2018 both Ms. Phipps and Dr. Phipps were advised by email from Mr. Frennier that there had been nothing received from them. Again, there was no response.

17. Dr. Phipps filed four renewal applications for his medical license with the Vermont Board of Medical Practice. In each renewal application (2012, 2014, 2016, and 2018) he certified and declared under pains and penalties of perjury that he was in good standing with respect to his Vermont Taxes. The renewal form defines the term “good standing”. Dr. Phipps misrepresented his tax status on each of the four renewal applications. (State Exhibit 17) In light of the extensive correspondence between Dr. Phipps and the Vermont Tax Department, the Committee concludes that the misrepresentations by Dr. Phipps on each of the renewal applications were intentionally false. Since he had not filed tax returns, had not paid Vermont income tax, had not paid quarterly estimated taxes and had not paid to the State of Vermont required withholding taxes for employees, it is clear that his declarations of “good standing” on the renewal applications to the Board were intentionally false.
18. The Specification of Charges against Dr. Phipps were prepared and filed with the Board on or about January 28, 2019. A Notice of Hearing was prepared and filed with the Board on or about February 27, 2019. A copy of this Notice of Hearing, the Specification of Charges, and the Board Rules were sent to Dr. Phipps by certified mail and were received and signed for by L. Phipps sometime before March 26, 2019. In addition, a copy of the Notice of Hearing dated February 27, 2019 was personally served upon Dr. Phipps in Littleton New Hampshire on March 7, 2019. (State Exhibit 8)
19. When Mr. Frennier personally served the Notice of Hearing on March 7, 2019, Mr. Frennier had to wait for Dr. Phipps to be finished with surgery. When served, Dr. Phipps did not indicate surprise, anger, or any other emotional response in reaction to the personal service of the Notice of Hearing. The medical office and Dr. Phipps’ private office appeared to Mr. Frennier to be well-kept and organized.
20. Mr. Frennier (who is experienced in investigations of unprofessional conduct allegations) expressed that the failure of the Respondent to communicate in this case was “uncharacteristic of investigations”.
21. No answer was filed by Dr. Phipps to the Specification of Charges. The Committee is unaware of any communication by Dr. Phipps the Vermont Board of Medical Practice following service of the Specification of Charges.

Conclusions of Law and Discussion

A. Count I

Vermont law requires that applicants for professional licenses sign a written declaration that they are in “good standing” with regard to taxes and that if the written declaration is “not true and correct as to every material matter” the declarant is subject to criminal fine and imprisonment. See 32 VSA Sec. 3113(b) and (h). Likewise, the failure of a licensee “to comply with provisions of federal or state statutes” constitutes unprofessional conduct. 26 VSA Sec. 1354(27). The four renewal applications contained material information which was untrue, and therefore the Committee finds that the Respondent committed unprofessional conduct. Related to this Count is 32 VSA Sec. 3113(f) which provides that, following a request by the Commissioner of Taxes and after notice and hearing, the agency shall revoke or suspend any license issued to a person if the agency finds that taxes have not been paid and that the taxpayer’s liability is not under appeal. The tax liability of the Respondent is not under appeal.

B. Count II

26 VSA Sec. 1354(a)(1) states that any applicant for a Vermont medical license who commits "... fraud or misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic renewal of a medical license" has committed unprofessional conduct. The four renewal applications contained fraudulently false information or material misrepresentations, and therefore the Committee finds that the Respondent committed unprofessional conduct.

C. Count III

26 VSA Sec. 1398 allows the suspension, revocation, or refusal of a medical license where persons "...by false or fraudulent representations have obtained or sought to obtain practice in their profession..." The four renewal applications contained false information and fraudulent representations, and, therefore, the Committee finds that the Respondent committed unprofessional conduct.

D. Count IV

The Vermont Medical Practice Board Rule 7.3 provides, in part, that:

Professionals have a continuing duty and obligation during each two-year renewal period to promptly notify the Board of any change to 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.

Board Rule 35.2.1.3 provides that a respondent must provide a written response to the Board after receiving notice of a complaint.

Board Rule 36.2.1 provides that "[p]rofessionals are obligated to cooperate with the Board throughout an investigation".

In the case now before the Committee, Dr. Phipps failed to advise the Board that his prior answers on his licensing application had become false.

Dr. Phipps consistently failed to provide written responses to the Board after receiving numerous notices of the complaints by the Vermont Tax Department to the Board. Most glaringly, Dr. Phipps did not cooperate with the investigation. In addition to his failure to actively respond to requests for information by Investigator Frennier, Dr. Phipps implied or stated that he had no knowledge about tax problems; he clearly had knowledge of these tax problems. In addition, Ms. Phipps implied that a written response had been made to the Board, of which she never produced a copy and which was never received by the Board. Telephone calls by the Board investigator were abruptly hung up without response. The Vermont Board of Medical Practice reasonably expects licensees to comply with the Board rule which requires cooperation. Such a blatant breach of the rule is unprofessional conduct.

E. Count V

26 VSA Sec. 1354(a)(34) defines unprofessional conduct to include, "... failure to provide to the board such information it may reasonably request in furtherance of its

statutory duties.” Mr. Frennier asked for information numerous times from the Respondent, or his agent. These requests included: copies of a non-existent letter supposedly written by Lisa Phipps, written responses by Dr. Phipps to the allegations, and responses to emails from Mr. Frennier. The failure by Dr. Phipps and his agent to provide requested information (which was reasonably requested) constitutes unprofessional conduct.

At the hearing before the Committee the State requested that the medical license of the Respondent be indefinitely suspended until such time as the Respondent can produce a certificate from the Vermont Tax Department that he and his business are in “good standing” with respect to any and all taxes payable as of the date of issuance of the certificate. In addition, the State urged that, because of the unprofessional conduct, the Respondent should have an additional 90-day suspension to follow any filing of a certificate of good standing as set forth above, accompanied with a formal reprimand.

The Committee has concerns that the sanction proposed by the State is inadequate to address the concerns which have been raised in this matter. First, the egregious nature of the failure to cooperate by the Respondent in the investigation (who at times beclouded the investigation) would seem to justify a greater sanction than a 90-day suspension and a formal reprimand. The Board rule which requires cooperation by licensees in investigations is important to the Board’s administrative function and serves notice to others who are being investigated that cooperation is required. Board Rule 1.1 states:

The purpose of the Board of Medical Practice is to protect the public health, safety and welfare. The Board does this by setting standards for issuing licenses and certifications, by licensing and certifying only qualified applicants, by investigating unprofessional conduct and unlicensed practice of medicine, by disciplining and regulating the practices of license and certificate holders and by providing licensees with guidelines, policies and continuing medical education. (emphasis added)

Second, the failure of Dr. Phipps to give any explanation concerning his situation to anyone at the Board level, raises the possibility that there may be other issues surrounding his professional practice. Committee members questioned the investigator as to whether there was any evidence of incapacity or distraction (of which there was no evidence). Nonetheless, the Board should have a better sense of what factors were involved in the Respondent’s failure to pay ordinary taxes, and his failure to cooperate in the investigation. Only then can appropriate steps to protect the public be known. Possibly none are necessary. It is the view of the Committee that this question should best be addressed when and if the Respondent cures his tax problem and applies for reinstatement of his license. At that time, the Board can fashion any further conditions that may be warranted based upon any request the Respondent may file in order to reinstate his license.

Finally, the four renewal applications which included misrepresentations constitute a serious breach of professional honesty. It is the view of the Committee that public protection demands that the Board have some knowledge as to the surrounding circumstances before the Respondent’s license is reinstated. Under 26 VSA Sec. 1361(b), if the Board finds the Respondent to be guilty of unprofessional conduct it may suspend the license and condition the

Respondent's practice "... or take such other action relating to discipline or practice as the board determines is proper..."

In this case the Committee recommends that the Board adopt the Findings and Conclusions as set forth above and impose the following Order:

PROPOSED ORDER

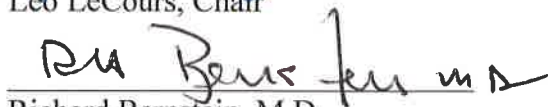
The Vermont medical license of Stephen Jonathan Phipps, Credential No. 042.0010054, is hereby INDEFINITELY SUSPENDED. The Respondent may not apply for reinstatement of his license until such time as he submits to the Board a certificate of good standing from the Vermont Tax Department. In addition, his license shall remain suspended until such time as he satisfies such conditions as the Board may impose at the time he requests reinstatement. Such conditions may include, but not be limited to, an evaluation of the Respondent's physical, mental and moral fitness to return to the practice of medicine.

Hearing Committee of the Vermont Board of Medical Practice



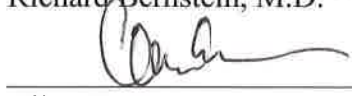
Leo LeCours, Chair

Dated this 5 day of May, 2019



Richard Bernstein, M.D.

Dated this 5 day of May, 2019



Allen Evans

Dated this 5 day of May, 2019