

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

James Napier, M.D.)

Docket Number MPN 95-0910

DECISION AND ORDER SUSPENDING MEDICAL LICENSE

This order responds to the State's Notice of non-compliance with the Tax Department and loss of good standing status, dated September 17, 2010, in the above captioned matter.

Procedural History

On September 17, 2010 the Vermont Department of Taxes gave notice to the Vermont Department of Health, Board of Medical Practice that James M. Napier, a medical doctor licensed by the State of Vermont, has not been in good standing in regard to his Vermont taxes owed since April 17, 2009, contrary to Vermont law 32 V.S.A. 3113, and requested that the Vermont Board of Medical Practice initiate proceedings to suspend Dr. Napier's medical license as required by 32 V.S.A. 3113 (F).

On September 17, 2010 the Vermont Board of Medical Practice gave notice to Dr. Napier and counsel of the specification of charges as alleged by the Vermont Department of Taxes, asking that he advise the Board as to how he intended to achieve good standing status.

Notice of Hearing was sent to Dr. Napier by United States Mail, Certified, Return Receipt Requested. Notice was accepted and received by Dr. Napier's at his residence, 2493 Royalton Hill Road, South Royalton, Vermont. The Hearing is set for December 1, 2010 at 1:00 p.m., Gifford Medical Center, Red Clover Room, 44 South Main Street, Randolph, Vermont.

Appearances: Marjorie Power, Esq., served as Presiding Officer, Judith E. Lambert's, Supervisor of Tax Collections through Ms. Fuller, and Assistant Attorney General Terry Lovelace appeared for the State of Vermont.

The Board has based its decision and order on the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. The Findings of Fact in the Board's Decision and Order in this docket, Dated December 1, 2010, are herein incorporated by reference.
2. Dr. Napier has failed to file Vermont income withholding tax returns since April 17, 2009. In consequence of his noncompliance with Vermont law Dr. Napier is not in good standing as defined in 32 V.S.A. §3113(f).

Conclusions of Law

Vermont state tax law requires that "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 ... have not been paid and the taxpayer's liability for such taxes is not under appeal." 32 V.S.A. §3113(f) [emphasis added] All that is required as *prima facie* evidence of the alleged failure to pay taxes is a written representation to that effect from the Department of Taxes. *Id* The affidavit of Judith E. Lambert, Supervisor of Collections, Department of Taxes, and testimony of Ms. Fuller, admitted in this docket provides that evidence.

Respondent has failed to file Vermont income withholding tax returns since April 17, 2009. Although there is a hardship provision in the statute, it applies only to unpaid taxes due; it is not available for failure to file tax returns. 32 V.S.A. §3113(g)(4). Respondent Dr. Napier has not pleaded hardship.

Under the applicable law and the facts of this case, the Board is without discretion and must suspend Respondent Dr. Napier's medical license unless the taxpayer's liability is under appeal. 32 V.S.A. §3113(f). No evidence was adduced that any such appeal is pending.

Accordingly, the Board must suspend Respondent Dr. Napier's medical license until such time as the Department of Taxes certifies to the Board that he is in good standing with regard to his Vermont taxes.

ORDER

In accordance with the Findings of Fact and Conclusions of Law set forth above:

1. The Motion to Suspend or Revoke Medical License is GRANTED and the license to practice medicine of Respondent James M. Napier, M.D. is SUSPENDED, pursuant to 32 V.S.A. §3113(1).
2. This Order of Suspension of licensure shall be deemed entered and effective at the time it is personally served on Respondent James M. Napier, M.D., or if personal service cannot be effected, by leaving copies at the Respondent's home or office with some person of suitable age and discretion.
3. During the pendency of this SUSPENSION Respondent may not practice medicine or hold himself out in any way as a licensed physician in the State of Vermont. Practicing medicine during the period of suspension may give rise to further actions against Respondent and further sanctions.
4. Board's investigative staff are directed to monitor Respondent's compliance with this order.

FOR THE BOARD:

DATE:

Margaret F. Martin

MARGARET F. MARTIN
Secretary, Vermont Board of Medical Practice

December 1st 2010