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CASE UNSEALED PER ORDER OF COURT

~~SEALED~~

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

December 2012 Grand Jury,

13 CR 3046 CAB

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 WILLIAM RICHARD BAILEY,
15 Defendant.

) Case No. _____
)
) **I N D I C T M E N T**
)
) Title 26, U.S.C.,
) Sec. 7201 - Tax Evasion

17 The Grand Jury charges:

18 INTRODUCTORY ALLEGATIONS

19 At all times relevant herein:

20 1. The federal income tax system of the United States of
21 America relies upon citizens to truthfully, accurately, and timely
22 report income and expense information to the Internal Revenue Service.

23 2. Beginning in or about 1989, and continuing through at least
24 the date of this Indictment, defendant WILLIAM RICHARD BAILEY
25 (hereinafter "defendant BAILLEY") was a physician who practiced
26 osteopathic medicine and provided medical services to patients of
27 various clinics.

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1 3. In or about August and September 2004, defendant BAILEY
2 executed documents that were purportedly part of the creation of a
3 "trust" and "unincorporated business trust organization" (hereinafter
4 "UBO") and was used by defendant BAILEY during at least calendar years
5 2004 through 2011 for the purpose of concealing from the Internal
6 Revenue Service income from defendant BAILEY's practice as a
7 physician.

8 4. For at least calendar years 2004 through 2011, defendant
9 BAILEY provided physician services in exchange for compensation under
10 service contracts as an "employee" of the "UBO" with the entities of
11 at least two physicians who operated clinics in San Diego County. The
12 contracts directed the entities of the physicians to make payments for
13 services provided by defendant BAILEY to the "UBO."

14 5. In or about September 2004, defendant BAILEY opened and
15 caused to be opened a bank account in the name of the "UBO," whereby
16 defendant BAILEY had signature authority on the bank account.

17 6. On or about April 15, 2005, defendant BAILEY failed to file
18 a U.S. individual income tax return for tax year 2004.

19 7. On or about April 15, 2006, defendant BAILEY failed to file
20 a U.S. individual income tax return for tax year 2005.

21 8. On or about April 15, 2007, defendant BAILEY failed to file
22 a U.S. individual income tax return for tax year 2006.

23 9. On or about October 31, 2007, defendant BAILEY appeared
24 before the U.S. Tax Court in the Southern District of California, and
25 the Court made a finding that BAILEY had taxable income that must be
26 reported to the Internal Revenue Service.

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1 to mislead and conceal his true and correct income and tax due thereon
2 from proper officers of the United States:

3 a. During the calendar year 2005, defendant BAILEY
4 received checks from at least two physicians who operated clinics in
5 San Diego County where defendant BAILEY provided physician services
6 in exchange for compensation. Defendant BAILEY directed that the
7 checks be made payable to the name of the "UBO."

8 b. During the calendar year 2005, defendant BAILEY
9 deposited income from his practice as a physician into a bank account
10 in the name of the "UBO" created for the purpose of tax evasion.

11 c. During the calendar year 2005, defendant BAILEY
12 transferred and caused to be transferred funds from the bank account
13 in the name of the "UBO" to pay for defendant BAILEY's personal
14 expenses and benefit.

15 d. On or about September 10, 2008, defendant BAILEY
16 prepared and caused to be prepared and signed a false and fraudulent
17 U.S. Individual Income Tax Return, Form 1040EZ, for the calendar year
18 2005, on behalf of himself, which was filed with the Internal Revenue
19 Service, and which contained and was verified by a written declaration
20 that it was made under the penalties of perjury and that defendant
21 BAILEY accurately listed all amounts and sources of income that he
22 received during the calendar year 2005, and wherein it was stated that
23 his taxable income for the calendar year 2005 was the sum \$0 and that
24 the amount of the tax due and owing therein was the sum of \$0,
25 whereas, as he then and there well knew and believed, his taxable

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1 income for the calendar year 2005 was in excess of that heretofore
2 stated amount and that upon said additional taxable income an
3 additional tax was due and owing to the United States.

4 All in violation of Title 26, United States Code, Section 7201.

5 Count 3

6 TAX EVASION

7 [26 U.S.C. § 7201]

8 14. The allegations set forth in paragraphs 1 through 5, 8 and 9
9 above are realleged as if fully set forth herein.

10 15. Beginning on or about January 1, 2006, and continuing up to
11 and including at least on or about September 10, 2008, within the
12 Southern District of California, defendant WILLIAM RICHARD BAILEY
13 (hereinafter "defendant BAILEY"), well-knowing and believing that he
14 had taxable income and a tax due and owing for the calendar year 2006,
15 did willfully attempt to evade and defeat this tax due and owing by
16 him to the United States by committing the following affirmative acts
17 of evasion, among others, the likely effect of each of which would be
18 to mislead and conceal his true and correct income and tax due thereon
19 from proper officers of the United States:

20 a. During the calendar year 2006, defendant BAILEY
21 received checks from at least two physicians who operated clinics in
22 San Diego County where defendant BAILEY provided physician services
23 in exchange for compensation. Defendant BAILEY directed that the
24 checks be made payable to the name of the "UBO."

25 b. During the calendar year 2006, defendant BAILEY
26 deposited income from his practice as a physician into a bank account
27 in the name of the "UBO" created for the purpose of tax evasion.

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1 c. During the calendar year 2006, defendant BAILEY
2 transferred and caused to be transferred funds from the bank account
3 in the name of the "UBO" to pay for defendant BAILEY's personal
4 expenses and benefit.

5 d. On or about September 10, 2008, defendant BAILEY
6 prepared and caused to be prepared and signed a false and fraudulent
7 U.S. Individual Income Tax Return, Form 1040EZ, for the calendar year
8 2006, on behalf of himself, which was filed with the Internal Revenue
9 Service, and which contained and was verified by a written declaration
10 that it was made under the penalties of perjury and that defendant
11 BAILEY accurately listed all amounts and sources of income that he
12 received during the calendar year 2006, and wherein it was stated that
13 his taxable income for the calendar year 2006 was the sum \$0 and that
14 the amount of the tax due and owing therein was the sum of \$0,
15 whereas, as he then and there well knew and believed, his taxable
16 income for the calendar year 2006 was in excess of that heretofore
17 stated amount and that upon said additional taxable income an
18 additional tax was due and owing to the United States.

19 All in violation of Title 26, United States Code, Section 7201.

20 Count 4

21 TAX EVASION

22 [26 U.S.C. § 7201]

23 16. The allegations set forth in paragraphs 1 through 5, and 9
24 above are realleged as if fully set forth herein.

25 17. Beginning on or about January 1, 2007, and continuing up to
26 and including at least on or about September 18, 2008, within the
27 Southern District of California, defendant WILLIAM RICHARD BAILEY
28 (hereinafter "defendant BAILEY"), who during calendar year 2007 was

1 married, well-knowing and believing that he and his spouse had taxable
2 income and a tax due and owing for the calendar year 2007, did
3 willfully attempt to evade and defeat this tax due and owing by him
4 and his spouse to the United States by committing the following
5 affirmative acts of evasion, among others, the likely effect of each
6 of which would be to mislead and conceal their true and correct income
7 and tax due thereon from proper officers of the United States:

8 a. During the calendar year 2007, defendant BAILEY
9 received checks from at least two physicians who operated clinics in
10 San Diego County where defendant BAILEY provided physician services
11 in exchange for compensation. Defendant BAILEY directed, that the
12 checks be made payable to the name of the "UBO."

13 b. During the calendar year 2007, defendant BAILEY
14 deposited income from his practice as a physician into a bank account
15 in the name of the "UBO" created for the purpose of tax evasion.

16 c. During the calendar year 2007, defendant BAILEY
17 transferred and caused to be transferred funds from the bank account
18 in the name of the "UBO" to pay for defendant BAILEY'S personal
19 expenses and benefit.

20 d. On or about September 18, 2008, defendant BAILEY
21 prepared and caused to be prepared and signed a false and fraudulent
22 U.S. Individual Income Tax Return, Form 1040EZ, for the calendar year
23 2007, on behalf of himself, which was filed with the Internal Revenue
24 Service, and which contained and was verified by a written declaration
25 that it was made under the penalties of perjury and that defendant
26 BAILEY accurately listed all amounts and sources of income that he
27 received during the calendar year 2007, and wherein it was stated that
28 his taxable income for the calendar year 2007 was the sum \$0 and that

1 the amount of the tax due and owing therein was the sum of \$0,
2 whereas, as he then and there well knew and believed, his taxable
3 income for the calendar year 2007 was in excess of that heretofore
4 stated amount and that upon said additional taxable income an
5 additional tax was due and owing to the United States.

6 All in violation of Title 26, United States Code, Section 7201.

7 Count 5

8 TAX EVASION

9 [26 U.S.C. § 7201]

10 18. The allegations set forth in paragraphs 1 through 5, and 9
11 above are realleged as if fully set forth herein.

12 19. Beginning on or about January 1, 2008, and continuing up to
13 and including at least on or about April 15, 2009, within the Southern
14 District of California, defendant WILLIAM RICHARD BAILEY (hereinafter
15 "defendant BAILEY"), who during calendar year 2008 was married, well-
16 knowing and believing that he and his spouse had taxable income and
17 a tax due and owing for the calendar year 2008, did willfully attempt
18 to evade and defeat this tax due and owing by him and his spouse to
19 the United States by committing the following affirmative acts of
20 evasion, among others, the likely effect of each of which would be to
21 mislead and conceal their true and correct income and tax due thereon
22 from proper officers of the United States:

23 a. During the calendar year 2008, defendant BAILEY
24 received checks from at least two physicians who operated clinics in
25 San Diego County where defendant BAILEY provided physician services
26 in exchange for compensation. Defendant BAILEY directed that the
27 checks be made payable to the name of the "UBO."

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1 21. Beginning on or about January 1, 2009, and continuing up to
2 and including at least on or about April 15, 2010, within the Southern
3 District of California, defendant WILLIAM RICHARD BAILEY (hereinafter
4 "defendant BAILEY"), who during calendar year 2009 was married, well-
5 knowing and believing that he and his spouse had taxable income and
6 a tax due and owing for the calendar year 2009, did willfully attempt
7 to evade and defeat this tax due and owing by him and his spouse to
8 the United States by committing the following affirmative acts of
9 evasion, among others, the likely effect of each of which would be to
10 mislead and conceal their true and correct income and tax due thereon
11 from proper officers of the United States;

12 a. During the calendar year 2009, defendant BAILEY
13 received checks from at least one physician who operated a clinic in
14 San Diego County where defendant BAILEY provided physician services
15 in exchange for compensation. Defendant BAILEY directed that the
16 checks be made payable to the name of the "UBO."

17 b. During the calendar year 2009, defendant BAILEY
18 deposited income from his practice as a physician into a bank account
19 in the name of the "UBO" created for the purpose of tax evasion.

20 c. During the calendar year 2009, defendant BAILEY
21 transferred and caused to be transferred funds from the bank account
22 in the name of the "UBO" to pay for defendant BAILEY's personal
23 expenses and benefit.

24 d. On or about April 15, 2010, defendant BAILEY prepared
25 and caused to be prepared and signed a false and fraudulent U.S.
26 Individual Income Tax Return, Form 1040, for the calendar year 2009,
27 on behalf of himself as married filing separately, which was filed
28 with the Internal Revenue Service, and which contained and was

1 verified by a written declaration that it was made under the penalties
2 of perjury and that defendant BAILEY to the best of his knowledge and
3 belief submitted a return that was true, correct, and complete, and
4 wherein it was stated that his taxable income for the calendar year
5 2009 was the sum \$0 and that the amount of the tax due and owing
6 therein was the sum of \$0, whereas, as he then and there well knew and
7 believed, his taxable income for the calendar year 2009 was in excess
8 of that heretofore stated amount and that upon said additional taxable
9 income an additional tax was due and owing to the United States.
10 All in violation of Title 26, United States Code, Section 7201.

11 Count 7

12 TAX EVASION

13 [26 U.S.C. § 7201]

14 22. The allegations set forth in paragraphs 1 through 5, and 9
15 above are realleged as if fully set forth herein.

16 23. Beginning on or about January 1, 2010, and continuing up to
17 and including at least on or about October 19, 2011, within the
18 Southern District of California, defendant WILLIAM RICHARD BAILEY
19 (hereinafter "defendant BAILEY"), who during calendar year 2010 was
20 married, well-knowing and believing that he and his spouse had taxable
21 income and a tax due and owing for the calendar year 2010, did
22 willfully attempt to evade and defeat this tax due and owing by him
23 and his spouse to the United States by committing the following
24 affirmative acts of evasion, among others, the likely effect of each
25 of which would be to mislead and conceal their true and correct income
26 and tax due thereon from proper officers of the United States:

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1 a. During the calendar year 2010, defendant BAILEY
2 received checks from at least one physician who operated a clinic in
3 San Diego County where defendant BAILEY provided physician services
4 in exchange for compensation. Defendant BAILEY directed that the
5 checks be made payable to the name of the "UBO."

6 b. During the calendar year 2010, defendant BAILEY
7 deposited income from his practice as a physician into a bank account
8 in the name of the "UBO" created for the purpose of tax evasion.

9 c. During the calendar year 2010, defendant BAILEY
10 transferred and caused to be transferred funds from the bank account
11 in the name of the "UBO" to pay for defendant BAILEY's personal
12 expenses and benefit.

13 d. On or about October 19, 2011, defendant BAILEY prepared
14 and caused to be prepared and signed a false and fraudulent joint U.S.
15 Individual Income Tax Return, Form 1040, for the calendar year 2010,
16 on behalf of himself and his spouse, which was filed with the Internal
17 Revenue Service, and which contained and was verified by a written
18 declaration that it was made under the penalties of perjury and that
19 defendant BAILEY to the best of his knowledge and belief submitted a
20 return that was true, correct, and complete, and wherein it was stated
21 that the joint taxable income for the calendar year 2010 was the sum
22 \$0 and that the amount of the tax due and owing therein was the sum
23 of \$0, whereas, as he then and there well knew and believed, his joint
24 taxable income for the calendar year 2010 was in excess of that
25 heretofore stated amount and that upon said additional joint taxable
26 income an additional tax was due and owing to the United States.
27 All in violation of Title 26, United States Code, Section 7201.

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Count 8

TAX EVASION

[26 U.S.C. § 7201]

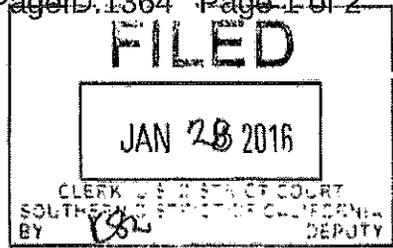
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4 24. The allegations set forth in paragraphs 1 through 5, and 9
5 above are realleged as if fully set forth herein.

6 25. Beginning on or about January 1, 2011, and continuing up to
7 and including at least on or about October 17, 2012, within the
8 Southern District of California, defendant WILLIAM RICHARD BAILEY
9 (hereinafter "defendant BAILEY"), who during calendar year 2011 was
10 married, well-knowing and believing that he and his spouse had taxable
11 income and a tax due and owing for the calendar year 2011, did
12 willfully attempt to evade and defeat this tax due and owing by him
13 and his spouse to the United States by committing the following
14 affirmative acts of evasion, among others, the likely effect of each
15 of which would be to mislead and conceal their true and correct income
16 and tax due thereon from proper officers of the United States:

17 a. During the calendar year 2011, defendant BAILEY
18 received checks from at least one physician who operated a clinic in
19 San Diego County where defendant BAILEY provided physician services
20 in exchange for compensation. Defendant BAILEY directed that the
21 checks be made payable to the name of the "UBO."

22 b. During the calendar year 2011, defendant BAILEY
23 deposited income from his practice as a physician into a bank account
24 in the name of the "UBO" created for the purpose of tax evasion.

25 c. During the calendar year 2011, defendant BAILEY
26 transferred and caused to be transferred funds from the bank account
27 in the name of the "UBO" to pay for defendant BAILEY's personal
28 expenses and benefit.



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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM RICHARD BAILEY,

Defendant.

VERDICT

CASE NO. 13CR3046-CAB

We the jury in the above entitled cause find the defendant WILLIAM RICHARD BAILEY,

~~(Not Guilty)~~ / Guilty

of Tax Evasion for tax year 2004 as charged in Count One (1) of the Indictment.

~~(Not Guilty)~~ / Guilty

of Tax Evasion for tax year 2005 as charged in Count Two (2) of the Indictment.

~~(Not Guilty)~~ / Guilty

of Tax Evasion for tax year 2006 as charged in Count Three (3) of the Indictment.

~~(Not Guilty)~~ / Guilty

of Tax Evasion for tax year 2007 as charged in Count Four (4) of the Indictment.

~~(Not Guilty)~~ / Guilty

of Tax Evasion for tax year 2008 as charged in Count Five (5) of the Indictment.

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(Not Guilty) Guilty

of Tax Evasion for tax year 2009 as charged in Count Six (6) of the Indictment.

(Not Guilty) Guilty

of Tax Evasion for tax year 2010 as charged in Count Seven (7) of the Indictment.

(Not Guilty) Guilty

of Tax Evasion for tax year 2011 as charged in Count Eight (8) of the Indictment.

Date: 28 Jan 2016
San Diego, California

L. J. ...
Foreperson of the Jury

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FILED

JUN 06 2016

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

AO 245B (CASDRev. 08/13) Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
v.
WILLIAM RICHARD BAILEY (1)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 13CR3046-CAB

SCOTT GROSS
Defendant's Attorney

REGISTRATION NO. 45130298

-

THE DEFENDANT:

pleaded guilty to count(s)

was found guilty on count(s) ONE (1) THROUGH EIGHT (8) OF THE EIGHT-COUNT INDICTMENT
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
26 USC 7201	TAX EVASION	1 - 8

The defendant is sentenced as provided in pages 2 through 6 of this judgment.
The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) _____ is dismissed on the motion of the United States.

Assessment: \$100.00 PER COUNT, FOR A TOTAL OF \$800.00

See fine page Forfeiture pursuant to order filed _____, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

June 3, 2016
Date of Imposition of Sentence

I hereby attest and certify on 7/6/2016
That the foregoing document is a full, true and correct
copy of the original on file in my office and in my legal
custody.

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

A. CORSELLO

By _____ Deputy

[Signature]
HON. CATHY ANN BENCIVENGO
UNITED STATES DISTRICT JUDGE

13CR3046-CAB

AO 245B (CASD Rev. 08/13) Judgment in a Criminal Case

DEFENDANT: WILLIAM RICHARD BAILEY (1)
CASE NUMBER: 13CR3046-CAB

Judgment - Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of: 41 MONTHS, PER COUNT, TO RUN CONCURRENT.

- Sentence imposed pursuant to Title 8 USC Section 1326(b).
- The court makes the following recommendations to the Bureau of Prisons:
PLACEMENT AT EITHER FCC BUTNER OR FPC GREENVILLE TO ALLOW PROPER MEDICAL CARE FOR THE DEFENDANT'S MEDICAL CONDITION(S).

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____ A.M. on _____
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - on or before
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B (CASD Rev. 08/13) Judgment in a Criminal Case

DEFENDANT: WILLIAM RICHARD BAILEY (1)
CASE NUMBER: 13CR3046-CAB

Judgment - Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **THREE (3) YEARS, PER COUNT, TO RUN CONCURRENT.**

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons unless removed from the United States.

The defendant shall not commit another federal, state or local crime.

For offenses committed on or after September 13, 1994:

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC section 3583(a)(7) and 3583(d).
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check if applicable.)*

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

13CR3046-CAB

AO 245B (CASD Rev. 08/13) Judgment in a Criminal Case

DEFENDANT: WILLIAM RICHARD BAILEY (1)
CASE NUMBER: 13CR3046-CAB

Judgment - Page 4 of 6

SPECIAL CONDITIONS OF SUPERVISION

1. Submit person, property, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. Report vehicles owned or operated, or in which you have an interest, to the probation officer.
3. Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
4. Provide complete disclosure of personal and business financial records to the probation officer as requested.
5. Notify the Collections Unit, United States Attorney's Office, of any interest in property obtained, directly or indirectly, including any interest obtained under any other name, or entity, including a trust, partnership or corporation until the fine or restitution is paid in full.
6. Notify the Collections Unit, United States Attorney's Office, before transferring any interest in property owned, directly or indirectly, including any interest held or owned under any other name, or entity, including a trust, partnership or corporation.
7. The defendant shall not work for cash and the defendant's employer shall provide regular paystubs with the appropriate deductions for taxes.
8. The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.
9. The defendant shall cooperate and furnish financial information and statements to the Internal Revenue Service (IRS) to determine all taxes due and owing, including interest and penalties, and shall file any past tax returns in a timely manner. The defendant shall pay in full any outstanding liability once assessed, including interest and penalties, or enter into an installment payment plan with the Collection Division of the IRS.
10. The defendant shall cooperate with any administrative findings of the IRS and file future income tax returns as required by law.

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AO 245B (CASD Rev. 08/13) Judgment in a Criminal Case

DEFENDANT: WILLIAM RICHARD BAILEY (1)
CASE NUMBER: 13CR3046-CAB

Judgment - Page 5 of 6

RESTITUTION

The defendant shall pay restitution in the amount of \$489,531.00 unto the United States of America.

Restitution payment shall be to the following:

<u>Victim</u>	<u>Amount</u>
Internal Revenue Service (IRS)	\$316,526.00 (plus prejudgment interest of \$111,854.00)
California Franchise Tax Board	\$61,151.00

Restitution payment will not begin until the defendant is released on supervised release. The U.S. Attorney's Office will issue an agreed upon payment schedule prior to the start of supervision. Until restitution has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

The interest requirement is waived

AO 245B (CASD Rev. 08/13) Judgment in a Criminal Case

DEFENDANT: WILLIAM RICHARD BAILEY (1)
CASE NUMBER: 13CR3046-CAB

Judgment - Page 6 of 6

FINE

The defendant shall pay a fine in the amount of \$80,000.00 (\$10,000.00 per Count) unto the United States of America.

IT IS ORDERED that the defendant pay fine in the amount of \$ 80,000.00 through the Clerk, U.S. District Court. The defendant shall begin payment of the fine during his term of supervised release at a rate agreed upon by the parties and the U.S. Attorney's Office will issue a payment schedule prior to the start of supervision. These payment schedules do not foreclose the United States from exercising all legal actions, remedies, and process available to it to collect the fine judgment.

Until fine has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

This sum shall be paid Immediately.

The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

The interest requirement is waived

//

1 KAMALA D. HARRIS
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 MICHAEL J. YUN
Deputy Attorney General
4 State Bar No. 292587
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9453
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

FILED

SEP 21 2016

**OSTEOPATHIC MEDICAL BOARD
OF CALIFORNIA**

9
10 **BEFORE THE**
OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 900-2016-000077

14 **WILLIAM R. BAILEY, D.O.**
4510 Executive Drive, Suite 107
15 San Diego, CA 92121

ACCUSATION

16 **Osteopathic Physician's and Surgeon's**
License No. 20A5811

17
18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Angelina M. Burton (complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Osteopathic Medical Board of California, Department of
24 Consumer Affairs, State of California.

25 2. On or about November 20, 1989, the Osteopathic Medical Board of California
26 (Board) issued Osteopathic Physician's and Surgeon's License No. 20A5811 to William R.
27 Bailey, D.O. (respondent). The Osteopathic Physician and Surgeon License was in full force and

28 ///

1 effect at all times relevant to the charges brought herein and will expire on April 30, 2018, unless
2 renewed.

3 3. On or about August 24, 2016, the Osteopathic Medical Board of California
4 automatically suspended respondent's Osteopathic Physician's and Surgeon's License No.
5 20A5811 pursuant to Business and Professions Code section 2236.1, subdivision (a).

6 JURISDICTION

7 4. This Accusation is brought before the Osteopathic Medical Board of California
8 (Board), under the authority of the following laws. All section references are to the Business and
9 Professions Code (Code) unless otherwise indicated.

10 5. Section 118, subdivision (b), of the Code provides, in pertinent part, that the
11 suspension/expiration [...] of a license shall not deprive the Board [...] to proceed with a
12 disciplinary action during the period within which the license may be renewed, restored, reissued
13 or reinstated.

14 6. Section 2234 of the Code states, in pertinent part:

15 The board shall take action against any licensee who is charged with
16 unprofessional conduct. In addition to other provisions of this article, unprofessional
17 conduct includes, but is not limited to, the following:

18 "(a) Violating or attempting to violate, directly or indirectly [...] any provision
19 of this chapter.

20 "...

21 "(e) The commission of any act involving dishonesty or corruption which is
22 substantially related to the qualifications, functions, or duties of a physician and
23 surgeon.

24 "..."

25 7. Section 2236 of the Code states, in pertinent part:

26 "(a) The conviction of any offense substantially related to the qualifications,
27 functions, or duties of a physician and surgeon constitutes unprofessional conduct

28 ///

1 within the meaning of this chapter. The record of conviction shall be conclusive
2 evidence only of the fact that the conviction occurred.

3 “... ”

4 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
5 deemed to be a conviction within the meaning of this section and Section 2236.1.
6 The record of conviction shall be conclusive evidence of the fact that the conviction
7 occurred.”

8 8. California Code of Regulations, title 16, section 1654 states, in pertinent part:

9 “For purposes of denial, suspension, or revocation of a certificate pursuant to
10 Code Division 1.5 (commencing with Code Section 475), a crime or act shall be
11 considered to be substantially related to the qualifications, functions or duties of a
12 person holding a certificate under the Osteopathic Act, if to a substantial degree, it
13 evidences present or potential unfitness of a person holding the certificate to perform
14 the functions of a physician and surgeon in a manner consistent with the public health,
15 safety, or welfare. Such crimes or acts shall include but not be limited to those
16 involving the violating or attempting to violate, directly or indirectly [...] any
17 provision or term of the Osteopathic Act or the Medical Practice Act or the conviction
18 of a crime involving fiscal dishonesty.”

19 COST RECOVERY

20 9. Section 125.3 of the Code states, in pertinent part:

21 “(a) Except as otherwise provided by law, in any order issued in resolution of a
22 disciplinary proceeding before any board within the department or before the
23 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
24 administrative law judge may direct a licentiate found to have committed a violation
25 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
26 investigation and enforcement of the case.

27 “... ”

28 ///

1 **2016 Conviction of Eight (8) Counts of Felony Tax Evasion**

2 11. On or about January 28, 2016, in a federal criminal proceeding entitled *United States*
3 *of America v. William Richard Bailey* in Case No. 13CR3046CAB in the United States District
4 Court, Southern District of California, respondent was found guilty and convicted of eight (8)
5 counts of Tax Evasion (Class D Felony), in violation of Title 26, United States Code, sections
6 7201, a felony within the meaning of California Business and Professions Code section 2236.1.

7 12. On or about June 3, 2016, respondent was sentenced to forty-one (41) months of
8 imprisonment, per count, to run concurrently, in federal prison, and further ordered to three (3)
9 years supervised release upon his release from prison, to pay restitution in the amount of
10 \$489,531.00 to the victims Internal Revenue Service (IRS) and California Franchise Tax Board,
11 and to pay a fine in the amount of \$80,000.00.

12 13. On or about June 3, 2016, respondent was remanded and his scheduled release date is
13 May 21, 2019.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Commission of Any Act Involving Dishonesty or Corruption)**

16 14. Respondent has subjected his Osteopathic Physician's and Surgeon's License No.
17 20A5811 to disciplinary action under sections 2234, as defined by section 2234, subdivision (e),
18 of the Code, and under title 16 section 1654 of the California Code of Regulations, in that he has
19 committed acts involving dishonesty or corruption, as more particularly alleged in paragraphs 10
20 through 13, above, which are hereby incorporated by reference and realleged as if fully set forth
21 herein.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct)**

24 15. Respondent has subjected his Osteopathic Physician's and Surgeon's License No.
25 20A5811 to disciplinary action under section 2234 of the Code, in that he has engaged in conduct
26 which breaches the rules or ethical code of the medical profession, or conduct which is
27 unbecoming a member in good standing of the medical profession, and which demonstrates an

28 ///

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

**In the Matter of the Accusation Against:
William R. Bailey, D.O.
Case No: 900-2016-000077**

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1300 National Drive, Suite 150, Sacramento, CA 95834.

On September 21, 2016, I served the attached **Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies) and Government Codes Sections 11507.5, 11507.6 and 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies) and Government Codes Sections 11507.5, 11507.6 and 11507.7** as enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Osteopathic Medical Board of California addressed as follows:

NAME AND ADDRESS

(certified and regular mail)

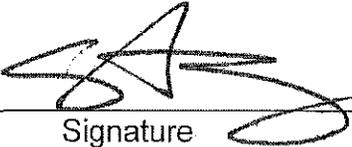
William R. Bailey, D.O.
451-30-298
Lompoc US Penitentiary:
3901 Klein Blvd.
Lompoc, CA 93436

Certified Mail No.
91 7199 9991 7036 9509 9587

91 7199 9991 7036 9509 9587

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 21, 2016 at Sacramento, California.

Steve Ly
Declarant


Signature

cc: Michael J. Yun, Deputy Attorney General

FILED

MAY 30 2017

BEFORE THE OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WILLIAM RICHARD BAILEY,

Respondent

Case No. 900-2016-000077

OAH No: 2016110734

ORDER OF DECISION

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Osteopathic Medical Board of California, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on June 29, 2017

It is so ORDERED May 30, 2017.

By: Joseph A. Zammuto, D.O.
JOSEPH A. ZAMMUTO, D.O., PRESIDENT
FOR THE OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WILLIAM R. BAILEY, D.O.

Osteopathic Physician's and Surgeon's
License No. 20A5811

Respondent.

Case No. 900-2016-000077

OAH No. 2016110734

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 13, 2017, in San Diego, California.

Michael J. Yun, Deputy Attorney General, represented complainant Angelina M. Burton, Executive Director, Osteopathic Medical Board of California, Department of Consumer Affairs, State of California.

No appearance was made on behalf of respondent, William R. Bailey. On March 9, 2017, respondent's motion for preliminary injunction was denied. Complainant requested that respondent's default be entered and that complainant be permitted to prove up the allegations set forth in the Accusation. Complainant established compliance with Government Code sections 11505 and 11509, and the hearing proceeded as a default pursuant to Government Code section 11520.

The matter was submitted on March 13, 2017.

FACTUAL FINDINGS

Jurisdictional Matters

1. On November 20, 1989, the Osteopathic Medical Board of California issued Osteopathic Physician's and Surgeon's License No. 20A5811 to respondent William R. Bailey. His license expires on April 30, 2018. On August 24, 2016, pursuant to Business

and Professions Code section 2236.1, subdivision (a), the board automatically suspended respondent's license as a result of his incarceration.

2. On September 21, 2016, complainant, signed the accusation in her official capacity. The accusation and other required documents were served on respondent. Respondent timely filed a notice of defense.

Respondent's Conviction

3. On January 28, 2016, respondent was convicted in the United States District Court for the Southern District of California, in Case No. 13CR3046CAB, of eight counts of Tax Evasion (Class D Felony), in violation of Title 26, United States Code, section 7201.

As a result of respondent's conviction, respondent was sentenced to 41 months of imprisonment, per count, to run concurrently, in federal prison, and further ordered to three years supervised release upon his release from prison, to pay restitution in the amount of \$489,531 to the victims, the Internal Revenue Service and the California Franchise Tax Board, and to pay a fine in the amount of \$80,000.

Circumstances of the Conviction

4. The circumstances of respondent's conviction were obtained from the certified copy of the indictment. For the years 2004 through 2011 respondent provided physician services in exchange for compensation under service contracts as an employee of a "trust" or "unincorporated business trust organization" (UBO) created by respondent for the purpose of concealing from the Internal Revenue Service (IRS) income from respondent's practice as a physician. During that time period, respondent received checks from at least two physicians operating clinics in the San Diego area where respondent provided physician services in exchange for compensation. Respondent directed that those checks be deposited to the UBO. Respondent opened a bank account in the name of the UBO whereby he had signature authority on the bank account.

Respondent failed to file a U.S. individual tax return for the tax years 2004, 2005, 2006. In 2007 respondent appeared before the U.S. Tax Court in the Southern District of California and that court found that respondent had taxable income during the years 2004 through 2006 that must be reported to the IRS. On or about September 10, 2008, respondent signed and filed a false and fraudulent U.S. Individual Income Tax Return for each of the calendar years 2004, 2005, 2006, and 2007 wherein he stated that his taxable income for each of those years was \$0 and the amount of tax due was \$0.

On April 15, 2009, respondent signed and filed a false and fraudulent U.S. Individual Income Tax Return for the calendar year 2008 wherein he stated that his taxable income was \$0 and the amount of tax due was \$0.

On April 15, 2010, respondent signed and filed a false and fraudulent U.S. Individual Income Tax Return on behalf of himself as married filing separately for the calendar year 2009 wherein he stated that his taxable income was \$0 and the amount of tax due was \$0.

On October 19, 2011, respondent signed and filed a false and fraudulent joint U.S. Individual Income Tax Return on behalf of himself and his wife for the calendar year 2010 wherein he stated that his taxable income was \$0 and the amount of tax due was \$0.

On October 17, 2012, respondent signed and filed a false and fraudulent joint U.S. Individual Income Tax Return on behalf of himself and his wife for the calendar year 2011 wherein he stated that his taxable income was \$0 and the amount of tax due was \$0.

Costs

5. The Attorney General's Office filed a Certification of Prosecution Costs pursuant to Business and Professions Code section 125.3 seeking cost recovery in the amount of \$10,832 in legal fees. The Attorney General's Office also filed a Certification of Costs of Investigation pursuant to Business and Professions Code section 125.3 seeking cost recovery in the amount of \$372 in investigation fees.

6. In determining whether respondent should be compelled to pay the board's costs, one must consider whether the costs are reasonable. Both declarations submitted by the Deputy Attorney General in support of the costs of prosecution and cost of investigation described the tasks performed, identified who performed them, and specified the time spent on the tasks. Based upon the nature of this case and the amount of time spent on the case, the cost of prosecution and investigation of \$11,204 is reasonable.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. An individual who holds a license to practice a particular profession has a fundamental vested right to continue in that licensed activity. Procedural due process requires a regulatory board or agency seeking to suspend or revoke a professional license to prove the allegations of an accusation by clear and convincing evidence rather than proof by a preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 991-992.) Complainant had the burden of proof in this matter to establish the allegations in the accusation by clear and convincing evidence.

2. Clear and convincing evidence requires a finding of high probability; the evidence must be so clear as to leave no substantial doubt; it must be sufficiently strong to command the unhesitating assent of every reasonable mind. This requirement presents a heavy burden, far in excess of the preponderance of evidence standard that is sufficient for most civil litigation. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Imposing License Discipline

3. The suspension or revocation of a license to engage in a profession is not penal; its purpose is to protect the public from incompetence and lack of integrity in those practicing the profession. The business of practicing medicine is intimately connected with, and has a vital relationship to, the health, safety, and welfare of the public. Public safety must be regarded as superior to private rights. (*Brodsky v. California State Bd. of Pharmacy* (1959) 173 Cal.App.2d 680, 688-689.)

4. Business and Professions Code section 2450.1 provides:

Protection of the public shall be the highest priority for the Osteopathic Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Applicable Statutes

5. Business and Professions Code section 2451 provides:

The words "Medical Board of California," the term "board," or any reference to a division of the Medical Board of California as used in this chapter shall be deemed to mean the Osteopathic Medical Board of California, where that board exercises the functions granted to it by the Osteopathic Act.

6. Business and Professions Code section 490 provides in part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea . . . of guilty. . . . Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, . . .

7. Business and Professions Code section 2234 provides in part:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

[¶] . . . [¶]

(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon. . . .

8. Business and Professions Code section 2236 provides in part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶] . . . [¶]

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

Substantial Relationship

9. To justify the imposition of discipline, there must be some nexus between an act or omission and the professional's fitness or competence to practice. The Legislature has established such a nexus with respect to certain acts or omissions even where the acts or omissions do not actually impair a professional's ability to practice. It does so by expressly identifying the act or omission as an instance of "unprofessional conduct." (*Medical Bd. of California v. Sup. Ct. (Liskey)* (2003) 111 Cal.App.4th 163, 174.)

A determination that a licensee's conviction justifies discipline cannot rest on the moral reprehensibility of the underlying conduct, but requires a reasoned determination that the conduct was in fact substantially related to the licensee's fitness to engage in the profession. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to "develop criteria to aid it . . . to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates." (*Donaldson v. Dept. of Real Estate of State of Cal.* (2005) 134 Cal.App.4th 948, 955-956.)

10. California Code of Regulations, title 16, section 1654, provides:

For purposes of denial, suspension, or revocation of a certificate pursuant to Code Division 1.5 (commencing with Code Section 475), a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a certificate under the Osteopathic Act, if to a substantial degree, it evidences present or potential unfitness of a person holding the certificate to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision or term of the Osteopathic Act or the Medical Practice Act or the conviction of a crime involving fiscal dishonesty.

11. The express language of California Code of Regulations, title 16, section 1654, and the clear intent of the regulation, demonstrate that respondent's eight counts of tax evasion were crimes involving fiscal dishonesty, constituted unprofessional conduct and his conviction was substantially related to the qualifications, functions and duties of a physician.

Cause Exists to Impose Discipline Against Respondent's License

12. First Cause for Discipline: Cause exists under Business and Professions Code sections 490, 2234, subdivision (a), and 2236, subdivision (a), to impose discipline on respondent's license. Clear and convincing evidence established that respondent was convicted of eight counts of tax evasion on January 28, 2016, and that this conviction was substantially related to the qualifications, functions and duties of a physician.

13. Second Cause for Discipline: Cause exists under Business and Professions Code section 2334, subdivision (e), to impose discipline on respondent's license. Clear and convincing evidence established that respondent was convicted of eight counts of tax evasion on January 28, 2016, and that the acts of dishonesty or corruption underlying this conviction were substantially related to the qualifications, functions and duties of a physician.

14. Third Cause for Discipline: Cause exists under Business and Professions Code section 2234, subdivision (a), to impose discipline on respondent's license. Clear and convincing evidence established that respondent was convicted of eight counts of tax evasion on January 28, 2016, and that the acts underlying this conviction constitute conduct unbecoming a member in good standing of the medical profession and demonstrate an unfitness to practice medicine.

Rehabilitation

15. California Code of Regulations, title 16, section 1769, sets forth the criteria for rehabilitation. It provides in part:

(c) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

16. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

17. Respondent made no appearance at the hearing and presented no evidence of rehabilitation.

Evaluation

18. Respondent was convicted of eight counts of tax evasion on January 28, 2016, only one year ago. Respondent is currently incarcerated for 41 months in federal prison as a

result of his conviction. The nature and severity of his conviction is very serious and involves fraudulent and fiscal dishonesty. His offenses were relatively recent in time. No evidence of rehabilitation was presented.

No discipline other than revocation is supported by this record.

Costs of Prosecution

19. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that the regulation imposing costs for investigation and enforcement under Title 16, California Code of Regulations, section 317.5 (which is similar to Bus. & Prof. Code § 125.3) did not violate due process in a case involving the discipline of a chiropractor. But, it was incumbent on the State Board of Chiropractic Examiners to exercise its discretion to reduce or eliminate cost awards in a manner that ensured that section 317.5 did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.”

The Supreme Court set forth four factors that the State Board of Chiropractic Examiners was required to consider in deciding whether to reduce or eliminate costs: (1) whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a “subjective” good faith belief in the merits of his position; (3) whether the chiropractor raised a “colorable challenge” to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

The *Zuckerman* criteria were applied in this matter, and it is concluded that issuing an order directing respondent to pay the board’s costs of prosecution and investigation in this matter will not have a chilling effect on future respondents’ exercise of their right to a hearing. Respondent shall be required to pay \$11,204 in prosecution and investigation costs. The costs shall be payable as a condition precedent to re-licensure.

ORDER

1. Osteopathic Physician’s and Surgeon’s License Number 20A5811, issued to respondent William R. Bailey, is revoked.

2. As a condition precedent to reinstatement of his license, respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$11,204. Said amount shall be paid in full prior to the reapplication or reinstatement of his license unless otherwise ordered by the board.

DATED: April 7, 2017

DocuSigned by:
Debra Nye-Perkins
73AD8C82D0DE42D...

DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE BY MAIL

In the Matter of the Accusation Against:

William Richard Bailey, D.O.

Case No: 900 2016 000077

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1300 National Drive, Suite 150, Sacramento, CA 95834. I served a true copy of the attached:

DECISION
PROPOSED DECISION

by mail on each of the following, by placing it in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS	CERT NO.
William Richard Bailey, D.O. 451-30-298 Lompoc US Penitentiary 3901 Klein Blvd. Lompoc. CA 93436	91 7199 9991 7036 9572 4946

Each said envelope was then, on May 30, 2017 sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid and return receipt requested.

Executed on May 30, 2017 at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Steve Ly

Typed Name



Signature

cc: The Honorable Debra D. Nye-Perkins, Administrative Law Judge
Michael J. Yun, Deputy Attorney General