



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

July 22, 2016

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Oleg Frank, M.D.  
[REDACTED]

Oleg Frank, M.D.  
[REDACTED]

David Quist, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Oleg Frank, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 16-260) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Office of Professional Medical Conduct  
Riverview Center  
150 Broadway - Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Riverview Center  
150 Broadway – Suite 510  
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah  
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

**COPY**

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: **IN THE MATTER** :  
: :  
: **OF** :  
: :  
: **OLEG FRANK, M.D.** :  
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**DETERMINATION  
AND  
ORDER**

**BPMC #16-260**

A hearing was held on June 16, 2016, at the offices of the New York State Department of Health ("Department").<sup>1</sup> Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), **MOHAMMAD-REZA GHAZI-MOGHADAM, M.D.**, Chairperson, **PAUL J. LAMBIASE**, and **RAVINDER MAMTANI, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MackILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE ("ALJ")**, served as the Administrative Officer.

The Department appeared by David Quist, Esq. A Notice of Referral Proceeding and Statement of Charges dated February 24, 2016, were served upon Oleg Frank, M.D. ("Respondent"), who did not appear at the hearing.<sup>2</sup> There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charge that Respondent committed professional misconduct, in violation of Education Law ("Educ. Law") § 6530(9)(a)(ii), by having been convicted of committing an act constituting a crime

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<sup>1</sup> The location of the hearing was 150 Broadway, Suite 510, Menands, New York.

<sup>2</sup> The Notice of Referral Proceeding and Statement of Charges were personally served on Respondent on March 4, 2016, pursuant to PHL § 230(10)(d)(i). As such, the ALJ determined that jurisdiction was established. [Ex. 1, 2; Appendix I].

under federal law, in violation of Title 42, United States Code § 1320a-7b(b)(1). The Hearing Committee unanimously votes 3-0 to revoke Respondent's license to practice medicine in New York.

### **BACKGROUND**

This case began with an Order by the Commissioner of Health, Howard A. Zucker, M.D., J.D., summarily suspending the Respondent's medical license pursuant to PHL § 230(12)(b). The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in the state of New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The Respondent is charged here with professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii), having been convicted of an act constituting a crime under federal law, in violation of Title 42 of the United States Code § 1320a-7b(b)(1), a felony.

### **FINDINGS OF FACT**

The Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex."]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On July 1, 2000, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 218204. [Ex. 1, 3].
2. On or about May 16, 2014, in the United States District Court, District of New Jersey,

Respondent pled guilty to Anti-Kickback Violation, a felony, in violation of Title 42 of the United States Code § 1320a-7b(b)(1). On June 10, 2015, the Respondent was sentenced to probation for a period of two years, payment of a \$100.00 special assessment and a \$2,500.00 fine, and payment of a criminal forfeiture money judgment totaling \$16,530. [Ex. 1, 4].

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

Respondent violated New York Educ. Law § 6530(9)(a)(ii) by having been convicted of an act constituting a crime under federal law.

**VOTE: Sustained (3-0)**

### **CONCLUSIONS OF LAW**

The Respondent did not appear at the hearing in person or by counsel. After considering the documentary evidence concerning service of the Notice of Referral Proceeding and Statement of Charges, the ALJ ruled that the Department had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits despite Respondent's absence. [Ex. 1, 2].

In the United States District Court of New Jersey, Respondent pled guilty to Anti-Kickback Violation, a federal crime. The conduct that is the subject of the Statement of Charges in this action constitutes a crime under federal law. Therefore, the specification of misconduct in the Statement of Charges in this proceeding is sustained. [Ex. 1, 4].

The Department's evidence demonstrated that Respondent's conduct involved the receipt of kickbacks, in the form of cash, from Orange Community MRI, LLC, a medical imaging company, "in return for referring patients" to the facility for treatment under the Medicaid program. This

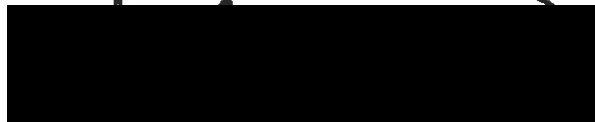
conduct represented to the Hearing Committee Respondent's lack of integrity in the use of his medical license to profit from an illegal activity involving a federal health care program and a breach of the public's trust. As such, in considering the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, the Hearing Committee unanimously concluded that the evidence supports the penalty of revocation of Respondent's New York medical license. [Ex. 4].

**ORDER**

**IT IS HEREBY ORDERED THAT:**

- 1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;
- 2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**;
- 3. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail or upon the Respondent at his last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York  
*July 21*, 2016



**Mohammad-Reza Ghazi-Moghadam, M.D.  
Chairperson**

**Paul J. Lamblase  
Ravinder Mamtani, M.D.**

TO: **Oleg Frank, M.D.**

[REDACTED]  
**Oleg Frank, M.D.**  
[REDACTED]

**David Quist, Esq.**  
**Associate Attorney**  
**New York State Department of Health**  
**Bureau of Professional Medical Conduct**  
**Corning Tower Building – Room 2512**  
**Empire State Plaza**  
**Albany, New York 12237**

## APPENDIX I



NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
OLEG FRANK, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Oleg Frank, M.D. Oleg Frank, M.D.

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on May 19, 2016, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.<sup>1</sup>

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150

<sup>1</sup> For GPS purposes, enter "Menands", not "Albany".

Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN,  
DIRECTOR, BUREAU OF ADJUDICATION [REDACTED] (henceforth "Bureau  
of Adjudication") as well as the Department of Health attorney indicated below, no later than  
twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written  
answer to each of the charges and allegations in the Statement of Charges at least ten days  
prior to the date of the hearing. Any charge or allegation not so answered shall be deemed  
admitted. You may wish to seek the advice of counsel prior to filing such answer. You may also  
file a written brief and affidavits with the Committee. All such documents shall be filed with the  
Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the  
attorney for the Department of Health whose name appears below, at least ten days prior to the  
date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary  
evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least  
three days prior to the hearing date to arrange for a pre-hearing conference with the  
Administrative Law Judge,

Not later than ten days prior to the date of the hearing, you are required to file one copy  
of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated  
above, and a copy of all such documents/exhibits must be served on the same date on the  
Department of Health attorney indicated below. On the day of the hearing, you are also required  
to provide the original of such exhibits and three copies, for use by the Committee.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon  
reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the  
proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State  
Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure  
of the evidence that the Respondent intends to introduce at the hearing, including the names of  
witnesses, a list of and copies of documentary evidence and a description of physical or other  
evidence which cannot be photocopied.

**YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC  
FIVE BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here [REDACTED]

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
February 24 2016



MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

David W. Quist  
Associate Attorney  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237

IN THE MATTER  
OF  
OLEG FRANK, M.D.

STATEMENT  
OF  
CHARGES

OLEG FRANK, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 2000, by the issuance of license number 218204 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 16, 2014 in the United States District Court for the District of New Jersey, Respondent pled guilty to one count of an anti-kickback violation in violation of 42 USC sec. 1320a-7b(b)(1), a felony. Pursuant to that plea, Respondent was convicted and sentenced on or about June 29, 2015, *inter alia*, to probation for a period of two years, payment of a special assessment in the amount of \$100, payment of a fine in the amount of \$2,500 and forfeiture in the amount of \$16,530.

**SPECIFICATION OF CHARGES**

**CRIMINAL CONVICTION (Federal)**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in Paragraph A.

DATE: February 24, 2016  
Albany, New York



MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduc