



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

June 16, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180

Ayman M. Kader, M.D.
10 Foundaryville Road
Berwick, PA 18603

Ayman M. Kader, M.D.
2421 East High Avenue
New Philadelphia, Ohio 44663

RE: In the Matter of Ayman M, Kader, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-154) 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

A handwritten signature in cursive script, appearing to read "James F. Horan".

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
AYMAN M. KADER, M.D. : ORDER
CO-03-04-1643-A :
-----X BPMC #03-154

A Commissioner's Order and Notice of Hearing, and a Statement of Charges, both dated April 30, 2003, were served upon the Respondent, Ayman M. Kader, M.D. **KENDRICK A. SEARS, M.D. (CHAIR), SHELDON GAYLIN, M.D., AND JUDITH GLUSKO, R.N.,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) (Executive) of the Public Health Law. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Robert Bogan, Esq., Associate Counsel. The Respondent failed to appear in person and was not represented by counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

Petitioner has charged Respondent with eight specifications of professional misconduct. The charges include one specification of obtaining the license fraudulently, in violation of New York Education Law §6530(1); two specifications of practicing the profession fraudulently, in violation of [New York Education Law §6530(2); one specification of having been convicted of an act constituting a crime under the law of another jurisdiction, which, if committed in New York State would have constituted a crime under New York law, in violation of New York Education Law §6530(9)(a)(iii); two specifications of conduct demonstrating moral unfitness to practice the profession, in violation of New York Education Law §6530(20); and two specifications of filing false reports, in violation of New York Education Law §6530(21).

A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Notations in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting

evidence, if any, was considered and rejected in favor of the cited evidence.

1. Ayman M. Kader, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State by the New York State Education Department's issuance of license number 224288 on March 26, 2002. (Pet. Exh. #4).

2. On or about March 20, 2001, in the Court of common Pleas, Tuscarawas County, Ohio, Respondent was indicted on seventeen (17) counts of trafficking in drugs, in violation of Ohio Revised Code, Section 2925.03; seventeen (17) counts of illegal processing of drug documents, in violation of Ohio Revised Code, Section 2925.23(B), and one (1) count of Medicaid fraud, in violation of Ohio Revised Code, Section 2913.40(B), all felonies. (Ex. #5; Ex. #6).

3. On or about March 5, 2002, Respondent prepared and submitted to the New York Education Department, an Application for License and First Registration. He falsely answered "No" to question #12, which asked, "Have you ever been charged with a crime (felony or misdemeanor) in any state or country, the disposition of which was other than acquittal or dismissal?" (Ex. #4).

4. On April 24, 2002, Respondent's clinical privileges were permanently revoked by the Twin City Hospital, Dennison,

Ohio, based upon serious deviation from commonly followed standards of medical practice. (Ex. #8(a); Ex. #8(b)).

5. On May 2, 2002, in the Court of Common Pleas, Tuscarawas County, Ohio, Respondent was found guilty of Medicaid fraud, in violation of Ohio Revised Code, Section 2913.40(B), a misdemeanor of the first degree. (Ex. #9).

6. On or about August 29, 2002, Respondent prepared and submitted to the New York State Department of Health a New York State Physician Profile. He falsely answered "No" to question #14, which asked, "Within the past 10 years, has there been any loss or involuntary restriction of your hospital privileges or removal of your medical staff membership related to the quality of patient care you delivered and where procedural due process has been afforded, exhausted or waived?". (Ex. #10).

7. Respondent also falsely answered "No" to question #15 on the New York State Physician Profile. This question asked "Have you been convicted of a crime (felony or misdemeanor) in any state, province, or country within the past 10 years?". (Ex. #10).

8. On February 6, 2003, in the Court of Common Pleas, Tuscarawas County, Ohio, Respondent was found guilty, based on a plea of No Contest, of five (5) felony counts of trafficking

in drugs, in violation of Ohio Revised Code, Section 2925.03 and five (5) felony counts of illegal processing of drug documents, in violation of Ohio Revised Code Section 2925.23(B). (Ex. #11).

9. Respondent was sentenced to six (6) months local incarceration, to be suspended in favor of three (3) years probation, for the conviction described in Paragraph 5, above. He was sentenced to three (3) years community control for the conviction described in Paragraph 8, above. He was further ordered to pay a \$40,000.00 fine in addition to restitution and costs of restitution. (Ex. #11).

CONCLUSIONS OF LAW

Respondent is charged with eight specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but does not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law" sets forth suggested definitions for gross

negligence, negligence, gross incompetence, incompetence, and the fraudulent practice of medicine.

The following definition was utilized by the Hearing Committee during its deliberations:

FRAUDULENT PRACTICE: The intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine, constitutes the fraudulent practice of medicine. Choudhry v. Sobol, 107 A.D. 2d 893, 566 N.Y.S. 2d 723 (3rd Dept. 1991), citing Brestin v. Commissioner of Education, 116 A.D. 2d 357, 501 N.Y.S. 2d 923 (3rd Dept. 1986). To sustain a charge that a licensee was engaged in the fraudulent practice of medicine, a hearing committee must find (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3d Dept. 1966), aff'd, 19 N.Y.2d 679 (1967). The licensee's knowledge and intent may properly be inferred from facts found by the hearing committee, but the committee must specifically state the inferences it is drawing regarding knowledge and intent. Choudhry, *supra* at 894 citing Brestin.

Using the above-referenced definition as a framework for its deliberations, the Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

Respondent failed to disclose his indictment on multiple felony charges when he filed his application for a New York medical license. The Education Department issued him a license in reliance on his statement that there were no criminal charges pending against him. Respondent failed to appear to defend himself against any of the allegations. The Committee inferred from his silence that he could not successfully defend against the charges. They further inferred that Respondent intentionally sought to mislead the Education Department with false information in order to obtain a medical license. As a result, the Committee concluded that Respondent obtained his New York medical license fraudulently, in violation of New York Education Law §6530(1), and sustained the First Specification.

In addition to obtaining his medical license fraudulently, Respondent failed to disclose his prior criminal conviction and loss of clinical privileges on his New York State Physician Profile. The Committee inferred from his failure to appear and defend against the allegations that Respondent

intentionally sought to mislead the Department of Health, as well as the Education Department. The Committee further concluded that Respondent's actions constituted the fraudulent practice of medicine, in violation of New York Education Law §6530(2), and sustained the Second and Third Specifications.

Respondent was convicted of Medicaid fraud, trafficking in drugs, and illegal processing of drug documents. These are all crimes under Ohio law. The Committee concluded that the conduct underlying these convictions, as set forth in the indictment (Ex. #6), would, if committed in New York, have constituted crimes under New York State law. As a result, the Committee sustained the Fourth Specification.

Respondent's criminal acts, as well as his fraudulent conduct, demonstrate a severe deviation from the moral and ethical standards of the medical profession. The Hearing Committee unanimously concluded that his actions evidenced moral unfitness to practice the profession, in violation of New York Education Law §6530(20). The Committee further concluded that the Fifth and Sixth Specifications should be sustained.

The record established that Respondent was convicted of Medicaid fraud, and that he lied on his application for licensure and on his profile form. The Hearing Committee concluded that Respondent's acts constituted the filing of false

reports, in violation of New York Education Law §6530(21). The Committee therefore sustained the Seventh and Eighth Specifications.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine as a physician in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent stands convicted of Medicaid fraud, as well as trafficking in drugs, and illegal processing of drug documents. He used his medical license to unjustly enrich himself, to the detriment of society. He further breached the moral and ethical standards of the medical profession when he sought to hide his misconduct from the State of New York.

Respondent failed to appear to defend himself, or to submit any evidence which might be considered in mitigation of his misdeeds. Under the circumstances, revocation is the only sanction which can protect the public.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First through Eighth Specifications of professional misconduct, as set forth in the Statement of Charges, (Exhibit #1) are SUSTAINED;
2. Respondent's license to practice medicine as a physician in New York State be and hereby is REVOKED;
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's 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: Troy, New York
June 12, 2003


KENDRICK A. SEARS, M.D. (CHAIR)

SHELDON GAYLIN, M.D.
JUDITH GLUSKO, R.N.

TO: Robert Bogan, Esq.
Associate Counsel
New York State Department of Health
433 River Street - Suite 303
Troy, New York 12180

Ayman M. Kader, M.D.
10 Foundaryville Road
Berwick, PA 18603

Ayman M. Kader, M.D.
2421 East High Avenue
New Philadelphia, Ohio 44663

APPENDIX I

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

IN THE MATTER
OF
AYMAN M. KADER, M.D.,
CO-03-04-1643-A

STATEMENT
OF
CHARGES

AYMAN M. KADER, M.D., the Respondent, was authorized to practice medicine in New York state on March 26, 2002, by the issuance of license number 224288 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 20, 2001, in the Court of Common Pleas, Tuscarawas County, Ohio, Respondent was indicted on seventeen (17) counts of Trafficking in Drugs, in violation of Ohio Revised Code, Section 2925.03, seventeen (17) counts of Illegal Possession of Drug Documents, in violation of Ohio Revised Code, Section 2925.23(B), and one (1) count of Medicaid Fraud in violation of Ohio Revised Code, Section 2913.40(B), all felonies.

B. On or about March 26, 2001, Respondent was arrested by the Tuscarawas County Sheriff's Office, based on the indictment described in Paragraph A above.

C. On or about March 5, 2002, Respondent prepared and submitted, to the New York State Department of Education, an Application for License and First Registration, wherein he falsely answered "No" to question "12. Have you ever been charged with a crime (felony or misdemeanor) in any state or county, the disposition of which was other than acquittal or dismissal?"

D. On or about March 26, 2002, the New York State Education Department, based on the Application for License and First Registration described in Paragraph C above, issued Respondent license number 224288, to practice medicine in New York state.

E. On or about April 24, 2002, Respondent's clinical privileges were permanently revoked by the Twin City Hospital, Dennison, Ohio, based upon serious deviation from standards of accepted medical practice.

F. On or about May 2, 2002, in the Court of Common Pleas, Tuscarawas County, Ohio, Respondent was found guilty of Medicaid Fraud, in violation of Ohio Revised Code, Section 2913.40(B), a misdemeanor of the first degree.

G. On or about August 29, 2002, Respondent prepared and submitted to the New York State, Department of Health, a New York State Physician Profile wherein he falsely answered "No" to Question #14, "Within the last 10 years has there been any loss of or involuntary restriction of your hospital privileges or your medical staff membership related to the quality of patient care you delivered and where procedural due process has been afforded, exhausted, or waived," and to Question #15, "Have you been convicted of a crime (felony or misdemeanor) in any state, province or country within the past 10 years?"

H. On or about February 6, 2003, in the Court of Commons Pleas, Tuscarawas County, Ohio, Respondent was found guilty, based on a plea of No Contest, of five (5) felony counts of Trafficking in Drugs, in violation of Ohio Revised Code, Section 2925.03, and five (5) felony counts of Illegal Processing of Drug Documents, in violation of Ohio Revised Code Section 2925.23(B), and sentenced to six (6) months local incarceration to be suspended in favor of three (3) years Probation, for the conviction described in Paragraph B above, and three (3) years Community Control for the above described felony counts, and to pay a \$40,000.00 fine in addition to restitution and costs of restitution.

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(1) by obtaining the license fraudulently, in that Petitioner charges:

1. The facts in Paragraphs A, B, C, and/or D.

SECOND AND THIRD SPECIFICATIONS

Respondent violated New York Education Law § 6530 (2) by practicing the profession fraudulently, in that Petitioner charges:

2. The facts in Paragraphs A, B, and/or C; and/or
3. The facts in Paragraphs A, B, E, F, and/or G.

FOURTH SPECIFICATION

Respondent violated New York State Education Law §6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction, and which, if committed within this state, would have constituted a crime under New York State law, in that Petitioner charges:

4. The facts in Paragraphs A, B, F, and /or H.

FIFTH AND SIXTH SPECIFICATIONS

Respondent violated New York Education Law §6530(20) by conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:


5. The facts in Paragraphs A, B, and/or C; and/or
6. The facts in Paragraphs A, B, E, F, and/or G.

SEVENTH AND EIGHTH SPECIFICATIONS

Respondent violated New York State Education Law § 6530(21) by filing a false report, or failing to file a report required by law, in that Petitioner charges

7. The facts in Paragraphs A, B, and/or C; and/or
8. The facts in Paragraphs A, B, E, F, and/or G.

DATED: *April 30*, 2003
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct