



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 28, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Amy Kulb, Esq.
Jacobson, Goldberg & Kulb, LLP
585 Stewart Avenue – Suite 720
Garden City, New York 11530

Jonathan Wahl



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

RE: In the Matter of Jonathan Wahl, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-412) 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 (1), (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**

CCPY

**IN THE MATTER
OF
JONATHAN WAHL, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #16-412

The New York State Department of Health ("Department") charged Jonathan Wahl, M.D. ("Respondent"), with professional misconduct in violation of New York State Education Law § 6530(9). The Department charges Respondent with professional misconduct pursuant to (1) Educ. Law § 6530(9)(a)(ii), for committing an act constituting a crime under federal law, and (2) Educ. Law § 6530(9)(d) for actions taken, leading to discipline of his medical license in another state, that constitute professional misconduct under the laws of New York State.

A hearing was held on October 19, 2016. Pursuant to Section 230(10)(e) of the Public Health Law ("PHL"), Airlie A.C. Cameron, M.D., M.P.H., Chair, Kristin E. Harkin, M.D., and Deborah Whitfield, M.A., Ph.D., duly designated members of the State Board for Professional Medical Conduct ("BPMC"), served as the Hearing Committee ("Committee"). Administrative Law Judge Jankhana Desai ("ALJ") presided over the hearing.

The Department appeared by Ian H. Silverman, Associate Counsel for the Bureau of Professional Medical Conduct. Respondent appeared by Amy Kulb, Attorney at Law. Evidence was received and a transcript of the proceeding was made. After consideration of the entire record, the Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to PHL § 230(10)(p), a statute that provides for a direct referral proceeding when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Department charges Respondent with professional misconduct in violation of two sections of this law. First, in violation of Educ. Law § 6530(9)(a)(ii), Respondent was convicted of an act constituting a crime under federal law. Specifically, Respondent was convicted of Conspiracy to Commit Healthcare Fraud, a federal crime under 18 U.S.C. § 1349. Second, in violation of Educ. Law § 6530(9)(d), Respondent had his license disciplined in another state, for actions that constitute professional misconduct under the laws of New York State. Specifically, Respondent's license was disciplined in New Jersey for the above-mentioned federal crime.

The scope of this direct referral hearing is limited to whether there was a relevant conviction or administrative determination in another state, and to an assessment of the nature and severity of the penalty to be imposed upon the licensee.

FINDINGS OF FACT

The following findings of fact were made unanimously by the Committee:

1. Respondent was authorized to practice medicine in New York State on May 18, 2004, by the issuance of license number 232419, by the New York State Education Department.
2. On June 7, 2011, in the United States District Court, Eastern District of New York, Respondent pled guilty to Conspiracy to Commit Healthcare Fraud, a felony, in violation of 18 U.S.C. § 1349. On March 17, 2016, Respondent was sentenced to three years of probation, required to pay \$200,000 in restitution, \$563,000 in forfeiture, and a \$100 court assessment.

3. On October 7, 2013, the New Jersey Board of Medical Examiners ("New Jersey Board"), disciplined Respondent's medical license for the crime set forth in Factual Finding 2. Specifically, by way of a consent order, the New Jersey Board allowed Respondent to voluntarily surrender his New Jersey medical license, deeming this surrender to be a revocation.

4. On July 5, 2016, in a Department Commissioner's Order, Respondent was summarily prohibited from practicing medicine in New York State or in any setting under the authority of Respondent's New York medical license.

VOTE OF THE COMMITTEE

FIRST SPECIFICATION

The Committee unanimously sustained the first specification that Respondent violated New York Educ. Law Section 6530(9)(a)(ii), by committing an act constituting a crime under federal law.

SECOND SPECIFICATION

The Committee unanimously sustained the second specification that Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(d).

COMMITTEE DETERMINATION

The Committee unanimously sustained the two specifications of misconduct contained in the Statement of Charges. The Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent testified at hearing, explaining the circumstances surrounding the crime. Respondent explained that he was involved in upcoding to obtain higher reimbursements for

medical services. The Committee found the Respondent to be insincere and less than forthcoming. In particular, he did not appear to take full responsibility for his actions that led to his criminal conviction. The Committee felt that Respondent showed limited remorse, and appeared to minimize his involvement in the systemic overbilling that led to his federal conviction. Importantly, the Committee found Respondent's actions to pose an indirect harm to his patients, finding a strong nexus between Respondent's crime and the practice of medicine. Under these circumstances, the Committee determined that Respondent's license to practice medicine in New York State should be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The first and second specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**.
2. Respondent's license to practice medicine in New York State is hereby **REVOKED**.
3. This Determination and Order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required by PHL 230(10)(b).

DATED: December 15, 2016

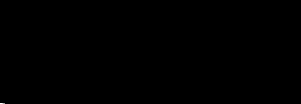

Airle A.C. Cameron, M.D., M.P.H., Chair

**Kristin E. Harkin, M.D.
Deborah Whitfield, M.A., Ph.D.**

To:

**Amy Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, NY 11530**

Jonathan Wahl



**Ian Silverman
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237**

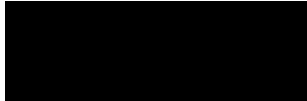
APPENDIX I

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

IN THE MATTER
OF
JONATHAN WAHL, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Jonathan Wahl, 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 September 15, 2016 at 10:30 a.m., at the offices of the New York State Department of Health, 259 Monroe Ave, Rochester, NY 14607.

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 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (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, prior to the hearing date.

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 her [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
July 5, 2016


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Ian Silverman
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER

OF

JONATHAN WAHL, M.D.

STATEMENT

OF

CHARGES

JONATHAN WAHL, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 18, 2014 by the issuance of license number 232419 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 7, 2011 in the United States District Court, for the Eastern District of New York, Respondent was found guilty, based on a plea of guilty, to the felony of Conspiracy to Commit Health Care, a C felony in violation of 18 U.S.C. § 1349, was sentenced to three years of probation, required to pay \$200,000 in restitution, a \$100 assessment and \$563,000 in forfeiture.

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: July 5, 2016
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct