



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 23, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Augustine Egbunike, M.D.
[REDACTED]
Federal Correctional Institution at Bastrop
1341 Highway 95
Bastrop, Texas 78602

Pooja Rawal, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Augustine Egbunike, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-177) 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.

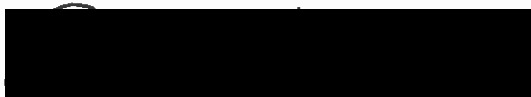
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: nm
Enclosure

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

C Y

**IN THE MATTER
OF
AUGUSTINE EGBUNIKE, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-17-177

A hearing was held on May 17, 2017, at the offices of the New York State Department of Health ("the Department"), Bureau of Adjudication, 150 Broadway, Suite 510, Albany, New York 12204. A Commissioner's Order of Summary Action, a Notice of Referral Proceeding and a Statement of Charges, all dated February 27, 2017, were served upon the Respondent, Augustine Egbunike, M.D.¹ Samuel F. Bosco, M.D., Chair, Jose M. David, M.D., and Janet M. Miller, R.N., members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. Denise Lepicier, Administrative Law Judge, served as the administrative officer. The Department appeared by Pooja Rawal, Senior Attorney, Bureau of Professional Medical Conduct. The Respondent, Augustine Egbunike, M.D., did not appear at the hearing. Evidence was received and a transcript of the proceeding was made. After consideration of the entire record, the hearing committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law ("PHL") § 230(10)(p). This statute provides for a hearing on limited issues when a licensce is charged based upon a violation of

¹ Also known as Augustine Olisa Chudi Egbunike, M.D., and Onwa Chudi Egbunike, and Augustine Ckukwudi Egbunike.

New York Education Law § 6530(9). In such cases, a licensee is charged with misconduct based upon certain convictions or administrative adjudications and the scope of the hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee. PHL § 230(10)(p).

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(a)(ii), by having been convicted of a crime under federal law.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Exhibits will be referred to in parentheses by an "Ex." followed by the appropriate exhibit number or letter. These citations refer to evidence found persuasive by the hearing committee in arriving at a particular finding. All hearing committee findings were unanimous.

1. Augustine Egbunike, M.D., the Respondent, did not appear at the hearing. He was notified of the hearing by personal service on April 4, 2017, at the Federal Correctional Institution in Bastrop, Texas. (Ex. 2)
2. The Respondent was authorized to practice medicine in New York State on October 18, 1994, by the issuance of license number 197552 by the New York State Education Department. (Ex. 3)
3. On January 16, 2015, Respondent was convicted upon his plea of guilty to one count of an indictment charging conspiracy to commit health care fraud in violation of 18 U.S.C. §§ 1349 and 1347. Counts two through fourteen of the indictment were dismissed. (Ex. 4)
4. On June 20, 2016, the United States District Court for the Southern District of Texas

- imposed judgment in case number 4:14CR00120-001 and sentenced Respondent. (Ex. 4)
5. Respondent was sentenced to a term of 57 months (4 years, 9 months) incarceration, three years of supervised release with additional terms for release upon his release from prison, a criminal monetary penalty of \$100 and restitution in the amount of \$2,024,032.69.
 6. The Respondent engaged in a conspiracy with others to bill Medicaid and Medicare for multiple different diagnostic vestibular tests which were either not performed, not medically necessary, and/or not performed by a licensed person or a person supervised by a physician. (Ex. 4)

CONCLUSIONS OF LAW

The following determination with respect to the specification charged was unanimous. The specification charges that Respondent violated Education Law § 6530 (9)(a)(ii) by having been “convicted of committing an act constituting a crime” under federal law. The Department has proven that the Respondent was convicted of the federal crime of conspiracy to commit health care fraud in violation of 18 U.S.C. §§ 1349 and 1347. The specification of misconduct is sustained.

DETERMINATION AS TO SANCTION

The hearing committee has considered the full range of sanctions available pursuant to PHL § 230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) monetary penalties; (8) a course of education or training; (9) performance of public service; and, (10) probation. The hearing committee has unanimously concluded that the only appropriate sanction is a revocation of Respondent’s license.

The committee believes that health care fraud is a very serious offense. It affects all persons because it increases the cost of medical care for everyone through increased premiums. This increase in cost can also lead to less access to care for some. Respondent has demonstrated that he is willing to use his license to enrich himself unjustly. He has brought disgrace to his profession. A revocation is the only appropriate sanction to answer for the enormity of the fraud in which he has engaged.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is **REVOKED**.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law § 230(10)(h).

DATED: _____, New York

June 14, 2017

Samuel F. Bosco, M.D., Chair

Jose M. David, M.D.
Janet M. Miller, R.N.

To:

Augustine Egbunike, M.D.

[REDACTED]
Federal Correctional Institution at Bastrop
1341 Highway 95
Bastrop, TX 78602

Pooja Rawal, Esq.
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower – 25th floor
Empire State Plaza
Albany, N.Y. 12237

APPENDIX I

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

IN THE MATTER
OF
AUGUSTINE EGBUNIKE, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: AUGUSTINE EGBUNIKE, M.D.

[REDACTED]
Federal Correctional Institution at Bastrop
1341 Highway 95
Bastrop, TX 78602

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 17, 2017 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 12204-2719.¹

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

¹ For GPS purposes, enter "Menands", not "Albany".

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 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 27 2017


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Pooja A. Rawal
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
AUGUSTINE EGBUNIKE, M.D.

STATEMENT
OF
CHARGES

Augustine Egbunike, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 18, 1994, by the issuance of license number 197552 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 16, 2015, Respondent pleaded guilty to one count of Conspiracy to Commit Health Care Fraud [18 U.S.C. §§ 1349 and 1347], a felony, in the United States District Court, Southern District of Texas,

On or about June 10, 2016, Respondent was convicted and sentenced in the same court to 57 months imprisonment with 3 years supervised release, and must pay restitution of \$2,024,032.69 with a \$100.00 assessment.

SPECIFICATION OF CHARGES

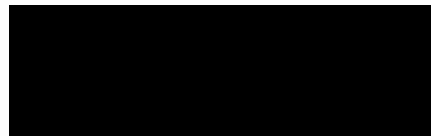
CRIMINAL CONVICTION

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

1. The facts as alleged in Paragraph A.

DATE: February 27, 2017

Albany, New York



MICHAEL A. HISER

Deputy Counsel

Bureau of Professional Medical Conduct