



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 8, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mark A. Filippone, M.D.


Marc S. Nash, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Albany, New York 12237

RE: In the Matter of Mark A. Filippone, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-251) 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:

Jean T. Carney, 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 Ms. Carney 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,



Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: cmg
Enclosure

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

COPY

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IN THE MATTER
OF
MARK A. FILIPPONE, M.D.

:
: DETERMINATION
:
: AND
:
: ORDER

:
: BPMC-21-251
-----X

A hearing was held on November 18, 2021 via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **MOHAMMAD-REZA GHAZI-MOGHADAM, M.D.**, Chairperson, **REID T. MULLER, M.D.**, and **JEFFREY FUDIN, Pharm. D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **NATALIE J. BORDEAUX, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

A Notice of Referral Proceeding, and Statement of Charges dated July 8, 2021¹, were duly served upon Mark A. Filippone, M.D. (Respondent). (Exhibits 1 and 2.) The Department appeared by Marc Nash, Associate Counsel. The Respondent appeared and testified on his own behalf. The Hearing Committee received and examined documents from the Department (Exhibits 1-5) and the Respondent (Exhibits A-D). A transcript of the proceeding was made.

The Hearing Committee unanimously voted 3-0 to sustain the charge that the 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 under federal law. Pursuant to PHL § 230-a, the Hearing Committee unanimously determined to revoke the Respondent's medical license.

¹ This hearing, originally scheduled for September 1, 2021, was adjourned to facilitate the Respondent's video connection.

JURISDICTION

The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii), by having been convicted of committing an act constituting a crime under federal law, specifically, 18 U.S.C. § 371. A licensee charged solely with a violation of Educ. Law § 6530(9) is entitled to a hearing, the scope of which is limited to whether there is a relevant conviction or administrative determination and if so, the nature and severity of the penalty to be imposed. PHL § 230(10)(p). Hearing procedures are set forth in Department regulations at 10 NYCRR Part 51. The Department had the burden of proving its case by a preponderance of the evidence. PHL § 230(10)(f).

FINDINGS OF FACT

The Hearing Committee, by unanimous vote, hereby makes the following findings of fact:

1. On July 1, 1975, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 124054. (Exhibit 3.)
2. On or about March 24, 2021, the Respondent was convicted in the United States District Court, District of New Jersey, to the felony crime of Conspiracy to Violate Anti-Kickback Statute, in violation of 18 U.S.C. § 371. He was found to have knowingly and intentionally conspired with individuals affiliated with a pharmacy to defraud the United States Department of Labor, Office of Workers' Compensation Program over a three-year period by prescribing non-medically necessary, expensive pain creams to injured federal employees, and referring those patients to that pharmacy to fill the prescriptions, enabling the pharmacy to obtain over \$1.4 million. In exchange, the pharmacy's owner purchased the Respondent's medical office and allowed the Respondent to continue to use the medical office, as well as an apartment above the medical office occupied by his

daughter without a rental obligation. The Respondent was sentenced to time served followed by a three-year period of supervised release. (Exhibits 4 and 5.)

CONCLUSIONS OF LAW

The Hearing Committee reviewed the Department's evidence showing the Respondent's conviction in the United States District Court, District of New Jersey, for Conspiracy to Violate Anti-Kickback Statute, a felony, under 18 U.S.C. § 371. Based on this conviction, the Hearing Committee unanimously voted (3-0) that the Respondent violated Educ. Law § 6530(9)(a)(ii), which defines professional misconduct to include:

9. (a) Being convicted of committing an act constituting a crime under...(ii) federal law.

The Hearing Committee then considered the full spectrum of penalties under PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and the penalties recommended by both parties. The Department recommended revocation of the Respondent's medical license. The Respondent requested a more lenient penalty, with the goal of continuing to serve as a volunteer instructor at local teaching hospitals.

The Hearing Committee was troubled by the Respondent's inability to grasp the magnitude of his actions. While he acknowledged possible wrongdoing due to his lack of understanding about the circumstances surrounding his daughter's ability to live in the apartment above his medical office rent-free, the Respondent made no mention of his own use of a medical office free of charge or the volume of prescriptions written for pain creams which were all filled by a pharmacy owned by his landlord. Instead, the Respondent repeatedly insisted that he was a victim of law enforcement, as he had been targeted by federal agents for several decades. The Respondent also contended that all prescriptions issued for pain creams were medically necessary and that his patients were never harmed.

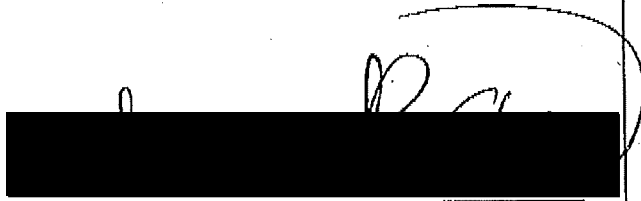
The Hearing Committee viewed the Respondent's explanations as demonstrating an utter lack of understanding of basic ethical rules of medical practice. In furtherance of its utmost responsibility to protect the public, the Hearing Committee concluded that the most appropriate penalty in this case is revocation of the Respondent's medical license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine in the state of New York is revoked, pursuant to PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

DATED: 12/6, New York (Amsterdam), 2021



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

Reid T. Muller, M.D.
Jeffrey Fudin, Pharm. D.

To: Mark Filippone, M.D.



Marc S. Nash, Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Albany, New York 12237

APPENDIX I

IN THE MATTER
OF
MARK FILIPPONE, M.D.

STATEMENT
OF
CHARGES

MARK FILIPPONE, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1975, by the issuance of license number 124054 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 24, 2021, in the United States District Court, District of New Jersey, Respondent was convicted of one felony count of Conspiracy to Violate Anti-Kickback Statute [18 U.S.C. § 371] and sentenced to time served followed by a three-year period of supervised release.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent violated Education Law § 6530(9)(a)(ii) by having been convicted of an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATE: July 8, 2021
Albany, New York



JEFFREY J. CONKLIN
Acting Deputy Counsel
Bureau of Professional Medical Conduct