



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

August 21, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

James Sakr, M.D.


RE: In the Matter of James Sakr, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-172) 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.

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 Respondent or the Department may seek a review of a committee determination.

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 Judge 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,



Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB:nm
Enclosure

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

COPY

-----X
IN THE MATTER :
OF :
JAMES SAKR, M.D. :
-----X

DETERMINATION
AND
ORDER

BPMC-23-172

A Notice of Referral Proceeding and Statement of Charges dated June 8, 2023, were duly served upon James Sakr, M.D. (Respondent). (Exhibits 1, 2.) A hearing was held on August 9, 2023 via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **RAVINDER MAMTANI, M.D.**, Chairperson, **ATUL GUPTA, M.D.**, and **DAVID F. IRVINE, DHSc, P.A.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX** served as the Administrative Officer.

The Department appeared by Marc S. Nash, Esq. The Respondent participated by telephone. The Hearing Committee received and examined documents from the Department. (Exhibits 1-5.) A transcript of the proceeding was made.

After considering the entire hearing record, the Hearing Committee hereby issues this Determination and Order to sustain the charge and impose professional discipline. All findings, conclusions, and determinations are unanimous.

JURISDICTION

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Education Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(c), by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or

regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to Education Law § 6530. Hearing procedures are set forth in Department regulations at 10 NYCRR Part 51. Under PHL §230(10), the Department had the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York by the Education Department on April 16, 1982 and was issued license number 149618. (Exhibit 3.)
2. On September 13, 2017, a Qui Tam Complaint and Demand for a Jury Trial (Complaint) was filed by an otolaryngologist (ENT doctor) against the Respondent in the United States District Court for the Western District of New York, alleging that the Respondent submitted claims to the Medicare program for nasal/sinus endoscopies via puncture and claims for endoscopic debridement, procedures that were likely not performed or, if performed, were not medically necessary. The complainant affirmed that the Respondent's performance of nasal endoscopies via puncture as a routine diagnostic procedure in lieu of the less invasive nasal endoscopy, as well as endoscopic debridement on patients who had not undergone surgery (if such procedures were performed), constituted deviations from the standard of care. The Complaint also alleged that the Respondent violated 31 U.S.C. §§ 3729 (a)(1)(A) and (B), federal law, by knowingly presenting or causing to be presented false claims for payment to government health care programs and by knowingly making, using or causing to be used, false records or statements material to a false or fraudulent claim. The Complaint further alleged that the Respondent's submission of false claims violated the New York False Claims Act. (Exhibit 5.)

3. By Joint Stipulation of Dismissal dated June 21, 2022 (Stipulation), entered in the United States District Court for the Western District of New York between the Respondent, the qui tam complainant, the United States Attorney's Office, and the Office of the New York State Attorney General, the Respondent agreed to waive any defenses against the Complaint, as well as his right to receive payment for the identified claims. In addition, the Respondent agreed to pay the United States government \$387,269.19, of which \$172,199.64 constituted restitution, and pay the State of New York \$215,392.43, of which \$95,729.97 constituted restitution. Pursuant to the Stipulation, the Respondent admitted that he submitted claims for payment to the Medicare and Medicaid programs for services that were either not performed or were not medically necessary if performed. (Exhibit 4.)

DISCUSSION

The Hearing Committee reviewed the Complaint and subsequent Stipulation entered in the United States District Court for the Western District Court, whereby the Respondent admitted to submitting false claims for payment to the Medicare and Medicaid programs, in violation of both federal and state laws. The Complaint was filed by an ENT doctor who reviewed claims for services submitted by the Respondent to the Medicare and Medicaid Programs for which he certified that he had performed the billed procedures, and for which he received reimbursement from those programs in the year 2014. The complainant determined that the Respondent's frequently claimed performance of nasal endoscopies via puncture, as opposed to the less invasive routine nasal endoscopy (for which he billed far less frequently), as well as the Respondent's frequently claimed performance of endoscopic debridement, reflected departures from the standard of care.

Pursuant to the Stipulation, the Respondent formally agreed to waive his right to raise any defenses to those allegations. The Hearing Committee therefore agreed that the conduct described in

the Complaint and admitted to in the Stipulation would constitute professional misconduct pursuant to Education Law § 6530(3), practicing the profession with negligence on more than one occasion, and determined that the Respondent violated Education Law § 6530(9)(c). As such, the Hearing Committee sustained the charge.

At the hearing, the Department recommended the penalties of censure and reprimand, along with a three-year term of probation under the supervision of a practice and billing monitor. The Respondent sought leniency, as he asserted that he had been unfairly punished for actions that were not fraudulent. He also explained that he did not understand the legal, social, and professional impact of his decision to settle the case when he entered into the Stipulation to end it.

The Stipulation reflects that over the course of six years, the Respondent submitted claims for payment to federal and state government agencies for procedures that he did not perform or, if performed, were not medically necessary. The Respondent's agreement to pay over \$387,000 to the federal government, including over \$172,000 in restitution, and over \$215,000, including nearly \$100,000 in restitution to the state of New York, reflected a pattern of abuse of government funds.

The Hearing Committee considered the Respondent's explanation of the events surrounding his execution of the Stipulation. The Respondent insisted that he properly submitted claims for Current Procedural Terminology (CPT) code 31233 (a nasal/sinus endoscopy, diagnostic with maxillary sinusoscopy via inferior meatus or canine fossa puncture). Despite conceding that he had not made the punctures on the patients for which this code was billed because his patients already had punctures, the Respondent maintained that he conducted the endoscopic procedures and was therefore entitled to payment under the CPT code that explicitly requires a puncture. The Respondent also stated that he retained a very expensive medical biller who agreed with his use of that code. However, he acknowledged that most medical billers would not have determined such

billings to be appropriate. The Respondent characterized his billings for debridement as proper but explained that his medical recordkeeping was not as descriptive as it should have been for those procedures.

The Respondent expressed a great passion for his work, and disclosed that he has a terminal illness which will likely result in his death in less than one year. In response to the Department's recommended terms of probation, the Respondent advised the Hearing Committee that he is already in debt as he continues to practice. He also claimed that a practice monitor is unnecessary because he is no longer physically capable of performing surgical procedures, and he has corrected his medical recordkeeping deficiencies by using a template document with appropriate prompts to insert required information.

The Hearing Committee found the Respondent's explanations evasive, as he frequently deflected responsibility for the actions cited in the Complaint and the Stipulation. Those deflections reflected a lack of insight as to the actions that resulted in his legal woes, and offered no assurances to the Hearing Committee that he has learned his lesson. Nevertheless, the Hearing Committee agreed that the Respondent has been significantly impacted by the legal action, and credited the Respondent's adjustments to his recordkeeping and changes in billing practices as signs that he has learned from his mistakes. In consideration of the full spectrum of penalties under PHL § 230-a, the Hearing Committee agreed with the Department's recommendation that a censure and reprimand was warranted for the Respondent's repeatedly inappropriate claims submissions.

Although the evidence presented by the Department reflected, at minimum, improper billing and use of government funds, the Hearing Committee disagreed with the Department that a probation term of any duration would be an adequate and effective means of protecting the public. The Hearing Committee concluded instead that the Respondent should be permanently precluded

from performing all invasive procedures, including, but not limited to, surgical procedures, endoscopic procedures, and debridement, in any and all settings. The penalties of censure and reprimand, in conjunction with a permanent prohibition on performing those procedures, would eliminate risks to patients in the state of New York, while still affording the Respondent the opportunity to continue practicing medicine within reasonable limits.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. Pursuant to PHL § 230-a(1), a censure and reprimand is imposed on the Respondent's license to practice medicine
3. Pursuant to PHL § 230-a(6), the Respondent is permanently prohibited from performing all invasive procedures, including, but not limited to, surgical procedures, endoscopic procedures, and debridement.
4. This Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

DATED: _____, 2023
_____, New York

[Redacted Signature]

16/2023

Ravinder Mamtani, M.D., Chairperson
Atul Gupta, M.D.
David F. Irvine, DHSc, P.A.

To: James Sakr, M.D.

[Redacted Address]

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

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

IN THE MATTER
OF
JAMES SAKR, M.D.

STATEMENT
OF
CHARGES

JAMES SAKR, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 16, 1982, by the issuance of license number 149618 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 21, 2022, in the United States District Court, Western District of New York, Respondent entered into a Joint Stipulation of Dismissal, whereby Respondent agreed to pay the United States the sum of \$387,269.19, of which \$172,119.64 constitutes restitution. This Settlement was based upon a civil fraud action filed pursuant to the False Claims Act (31 U.S.C. § 3730(b) and the New York False Claims Act (NY State Fin. Law §§ 187, *et seq.*), with the United States filing a complaint on August 24, 2020. Specifically, the complaint alleged that from January 1, 2014 through December 31, 2019, Respondent submitted to the Medicare and Medicaid programs for procedures and/or services that Respondent either did not perform, were not medically necessary, or were not supported by documentation in the medical records.

B. Respondent's conduct as described above, upon which the resolution of the proceeding by stipulation or agreement was based would, if committed in New York State, constitute professional misconduct under the laws of New York State pursuant to the following Section of New York State Law:

1. New York Education Law § 6530(3) (Practicing the profession with negligence on more than one occasion).

SPECIFICATION OF CHARGES

HAVING HAD ENTERED INTO A STIPULATION OR AGREEMENT TO RESOLVE AN ADJUDICATORY PROCEEDING ALLEGING A VIOLATION OF A STATE OR FEDERAL STATUTE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(c) by having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to this section (namely N.Y. Educ. Law § 6530(3)), as alleged in the facts of the following:

1. Paragraphs A and B and B.1

DATE: June 8, 2023
Albany, New York


JEFFREY J. CONKLIN
Deputy Director
Bureau of Professional Medical Conduct