

PUBLIC

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

July 19, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joel E. Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Emmanuel Gelin, M.D.

ADDRESS REDACTED

Emmanuel Gelin, M.D.
ADDRESS REDACTED

Rachel Weinrib, Esq.
Kirschenbaum & Kirschenbaum, P.C.
200 Garden City Plaza
Garden City, New York 11530

RE: In the Matter of Emmanuel Gelin, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-218) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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.

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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,

SIGNATURE REDACTED

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

COPY

-----X
IN THE MATTER

: DETERMINATION

OF

: AND

EMMANUEL GELIN, M.D.

: ORDER

CO-12-05-2264-A

: BPMC #13-218
-----X

A Notice of Referral Proceeding and Statement of Charges, both dated February 14, 2013, were served upon the Respondent, Emmanuel Gelin, M.D. C. DEBORAH CROSS, M.D. (Chair), EDMUND A. EGAN, II, and JAY A. ZIMMERMAN, Ph.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Joel E. Ablove, Esq., Associate Counsel. The Respondent appeared by Kirschenbaum & Kirschenbaum, P.C., Rachel Weinrib, Esq., of Counsel. A hearing was held on June 20, 2013. 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

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i) [conviction of committing an act constituting a crime under New York State law]. In addition, Respondent is charged with making a false statement on his registration renewal by failing to disclose his criminal conviction. 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. Numbers 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. Emmanuel Gelin, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on May 12, 1993 by the issuance of license number 192203 by the New York State Education Department. (Exhibit #3).

2. On or about February 10, 2012, in Supreme Court of Queens County, State of New York, Respondent was found guilty, based upon a plea of guilty, of Criminal Facilitation in the Fourth Degree, in violation of New York Penal Law §115.00(1), a class A misdemeanor. Respondent was sentenced on May 3, 2012 to a Conditional Discharge for One (1) year, \$175.00 surcharge, and a \$25.00 Crime Victim Fee. (Exhibit #4).

3. On or about March 14, 2012, Respondent renewed his New York State medical license and failed to disclose the criminal conviction in Paragraph 2, above, by answering "No" to the question: "Have you been found guilty after trial, pleaded

guilty, no contest, or nolo contendere to a crime (felony or misdemeanor) in any court?" (Exhibit #3).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence established that Respondent was convicted of committing a crime under New York State law. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(a)(i). Therefore, the Hearing Committee voted to sustain the First Specification of professional misconduct set forth in the Statement of Charges.

The registration renewal submitted by Respondent following his conviction clearly showed that his answer to the question regarding criminal convictions was not truthful. The Department has charged Respondent with practicing the profession fraudulently, in violation of New York Education Law §6530(2), and willfully making or filing a false report, in violation of New York Education Law §6530(21).

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, 170 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). In order to sustain a charge that a licensee was engaged in the fraudulent practice of medicine, the hearing committee must find that (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 (3rd Dept. 1966), aff'd 19 N.Y.2d 679, 278 N.Y.S.2d 870 (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, at 894 citing Brestin.

The first two components of the analysis have clearly been satisfied. Respondent answered "No" to the question regarding past criminal convictions, when he had in fact pled guilty to a misdemeanor just one month prior to the submission of his renewal application. He does not deny doing so, and acknowledges that this answer was not truthful. However, Respondent testified convincingly that he completed the application in a rote fashion, and did not intend to mislead the State by this filing, since the conviction was a matter of public

record. Based upon this testimony, the Hearing Committee declined to infer any intent to defraud, and voted to dismiss the Second Specification of professional misconduct. Similarly, the Committee concluded that Respondent's action in completing the application incorrectly was intentional, but did not rise to the level of willful conduct. Therefore, the Committee did not sustain the Third Specification.

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 should be suspended for a period of one year. The suspension shall be stayed, and Respondent placed on probation for a period of five years. During the first year of probation, Respondent's practice shall be monitored by a practice monitor approved by the Director of the Office of Professional Medical Conduct (OPMC). The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein.

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.

In considering the sanction to be imposed, it is

instructive to review the crime to which Respondent pled guilty.

Penal Law §115.00(1) provides that a person is guilty of criminal facilitation in the fourth degree when, believing it probable that he is rendering aid "to a person who intends to commit a crime, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony".

The practice commentary accompanying this statute notes that the crime is addressed to conduct where "the actor aids the commission of a crime...but without any specific intent to participate therein or to benefit therefrom... In fact, the conduct of the facilitator will be generally confined to preparation so attenuated from the final stages that the role of the facilitator is only remotely related as a cause or contributor to the ultimate crime". (McKinney's Consolidated Laws of New York, Book 39, p. 180).

In the instant case, Respondent purchased a "no fault insurance clinic", where accident victims came for medical evaluation and treatment. The office manager ran the clinic and submitted false claims by forging Respondent's signature on a stamp, and thereby collecting large sums of money. This was done without Respondent's knowledge or help. However, by entrusting all operations to the manager without providing effective oversight, Respondent enabled the fraud which ultimately

occurred.

In exercising our independent judgment as to the sanction to be imposed, we do take some guidance from the fact that the Court imposed the lightest sentence possible - a conditional discharge and \$200.00 in fees and surcharges. Similarly, we unanimously determined that the public interest would not be served by revoking Respondent's medical license.

A period of stayed suspension, with probation is the most appropriate balance of the need to punish Respondent and protect the public. Given the fact that Respondent has essentially not practiced medicine since his conviction in February, 2012, we also determined that his medical practice should be monitored for a period of one year. In addition, he shall be required to complete 30 hours of Category I CME in internal medicine prior to his return to practice. We sincerely hope that Respondent takes this opportunity to rehabilitate himself, and once again practice the profession.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;
2. The Second and Third Specifications of professional

misconduct are DISMISSED;

3. Respondent's license to practice medicine in New York State be and hereby is SUSPENDED for a period of ONE (1) YEAR.

Said suspension shall be STAYED and Respondent placed on probation for a period of FIVE (5) YEARS from the effective date of this Determination. The complete terms of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein;

4. 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: Elmsford, New York
July 15, 2013

SIGNATURE REDACTED

C. DEBORAH CROSS, M.D. (CHAIR)

EDMUND A. EGAN, II, M.D.
JAY A. ZIMMERMAN, Ph.D.

TO: Joel E. Abelove, Esq.
Associate Counsel
New York State Department of Health
Corning Tower - Room 2512
Albany, New York 12237

Emmanuel Gelin, M.D.

ADDRESS REDACTED

Emmanuel Gelin, M.D.

ADDRESS REDACTED

Rachel Weinrib, Esq.
Kirschenbaum & Kirschenbaum, P.C.
200 Garden City Plaza
Garden City, NY 11530

APPENDIX I

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

IN THE MATTER
OF
EMMANUEL GELIN, M.D.
CO-12-05-2264-A

STATEMENT
OF
CHARGES

EMMANUEL GELIN, M.D., Respondent, was authorized to practice medicine in New York State on May 12, 1993, by the issuance of license number 192203 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 10, 2012, in Supreme Court of Queens County, State of New York, Respondent was found guilty, based on a plea of guilty, of Criminal Facilitation in the Fourth Degree, in violation of New York Penal Law, §115.00 (1), a class A misdemeanor, and was sentenced on May 3, 2012, to a Conditional Discharge for One (1) year, \$175.00 surcharge, and a \$25.00 Crime Victim Fee.

B. On or about March 14, 2012, Respondent renewed his New York State medical license and failed to disclose the criminal conviction in Paragraph A above, by answering, "No" to the question: "Have you been found guilty after trial, pleaded guilty, no contest, or nolo contendere to a crime (felony or misdemeanor) in any court?"

FIRST SPECIFICATION

Respondent violated New York Education Law §8530(9)(a)(i) by being convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

1. The facts in paragraph A.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530 (2) by practicing the profession fraudulently.

2. The facts in paragraphs A and/or B.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530 (21) by willfully making or filing a false report required by law or by the department of health or the education department.

3. The facts in paragraph A and/or B.

FOURTH SPECIFICATION

Respondent violated New York Education Law §6530 (2) by practicing the profession fraudulently.

4. The facts in paragraph A and/or B.

DATED: Feb. 14, 2013
Albany, New York

SIGNATURE REDACTED

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

APPENDIX II

Emmanuel Gelin, M.D. Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Menands, New York 12204; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of the OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director of the OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall enroll in and complete thirty (30) hours of Category I continuing education program in the area of internal medicine. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed prior to the resumption of medical practice.
9. During the one year period of stayed suspension, and within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of the OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 15) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to the OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of the OPMC prior to Respondent's resumption of practice pursuant to this Order.
10. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.