

May 19, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Lucio Cardoso, M.D.
REDACTED

Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Kevin D. Porter, Esq.
Bartlett, McDonough & Monaghan, LLP
81 Main Street – Suite 400
White Plains, New York 10601-1711

RE: In the Matter of Lucio Cardoso, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-131) 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. 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 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,

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

IN THE MATTER

OF

LUCIO CARDOSO, M.D.
CO-13-07-3475-A

DETERMINATION

AND

ORDER

BPMC #14-131

A hearing was held on April 23, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding and Statement of Charges all dated December 27, 2013, were served upon the Respondent, Lucio Cardoso, M.D. Pursuant to Section 230(10)(e) of the Public Health Law, Thea Graves Pellman, Chairperson, Leland Deane, M.D., M.B.A., and Michael J. Reichgott, M.D., Ph.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Christine C. Traskos, Esq. Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James Dering, Esq., General Counsel, by Jude B. Mulvey, Esq. of Counsel. The Respondent appeared by Bartlett, McDonough & Monaghan, LLP, Kevin D. Porter, Esq. of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This proceeding was brought pursuant to Public Health Law Section 230(10). The statute provides for an expedited hearing when a licensee is charged with a violation of

Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 this case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a).

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

WITNESSES

For the Petitioner: None

For the Respondent: Lucio Cardoso, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." or transcript page numbers ("T."). These citations refer to 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. All Hearing Committee findings were unanimous.

1. Lucio Cardoso, M.D. the Respondent, was authorized to practice medicine in New York State on October 31, 1988 by the issuance of license number 176686 by the New York State Education Department. (Petitioner's Ex. 3)

2. On or about June 26, 2013, in the United States District Court, District of New Jersey, Respondent was found guilty, after a plea of guilty to one count of Soliciting and Receiving Illegal Remunerations in violation of the federal health care program anti-kickback statute, 42 U.S.C. §1302a-7b(b)(1), a felony. He was sentenced to a four month term of Incarceration, four months home confinement, followed by one year supervised release, a fine of \$30,000, special assessment of \$100 and forfeiture of \$3,075.00.

(Petitioner's Ex.4)

VOTE OF THE HEARING COMMITTEE

SPECIFICATION OF MISCONDUCT

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of an act constituting a crime under federal law.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

At the hearing the Respondent acknowledged that he accepted monetary payments in return for referrals to an MRI group. Respondent testified that his conviction resulted in a loss of respect from colleagues, patients and family members. Although he is presently in home confinement, Respondent intends to apply for reinstatement of his New Jersey license and hopes to return to his practice in the underserved "Ironbound" neighborhood in Newark, New Jersey. Respondent expressed his desire to keep his New York license because he is uncertain about his future and he would like to keep his options open. Finally,

Respondent argued that his misconduct was an isolated lapse in judgment and that there are no issues involving the quality of his patient care or other outstanding disciplinary matters against him.

While the Department seeks revocation, the Hearing Committee believes that sanction to be excessive based on the amount of money involved in the kickbacks. They also found Respondent to be remorseful and sincere in his desire to return to his practice in the underserved community in Newark. The Hearing Committee believes that a three year outright suspension of Respondent's New York state license will coincide with the probation period to be imposed by the New Jersey Board, if Respondent's license is reinstated there. The Hearing Committee is more concerned that Respondent's present day clinical competency may have diminished since he voluntarily stopped practicing medicine in 2012. After the suspension is completed, the Hearing Committee believes that placing Respondent on a three year probation with a practice monitor is the best way to protect patient safety in New York State.

As a result, the Hearing Committee concludes that Respondent's license to practice medicine in New York State shall be suspended for an actual period of three years on the effective date of this Determination and Order. If Respondent elects to practice medicine in New York State after said suspension is completed, his license shall be placed on probation for a period of three (3) years with a practice monitor. The entire probation period shall be tolled until such time as Respondent decides to practice in New York State. The terms of probation are attached hereto as Appendix II and are incorporated into this Order.

This determination was reached after due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State is hereby **SUSPENDED FOR A PERIOD OF THREE (3) YEARS** commencing on the effective date of this Order;
3. After the three year suspension period, Respondent is placed on a term of probation for **THREE (3) YEARS**. The terms of the probation are attached hereto as Appendix II and are incorporated into this Order;
4. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: West Hempstead, New York

May 16, 2014

REDACTED

Thea Graves Pellman
Chairperson

Leland Deane, M.D., M.B.A.
Michael J. Reichgott, M.D., Ph.D

TO:

Lucio Cardoso, M.D.

REDACTED

Jude B. Mulvey, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower- Rm. 2512
Empire State Plaza
Albany, NY 12237

Kevin D. Porter, Esq.
Bartlett, McDonough & Monaghan, LLP
81 Main Street – Suite 400
White Plains, NY 10601-1711

APPENDIX I

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

IN THE MATTER
OF
LUCIO CARDOSO, M.D.
CO-13-07-3475-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

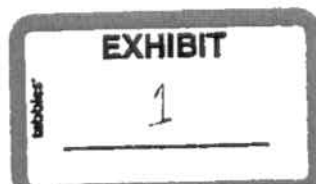
TO: Lucio Cardoso #64019-050
REDACTED

The undersigned, Sue Kelly, Executive Deputy Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that LUCIO CARDOSO, M.D., Respondent, New York license number 176686, has pleaded guilty to committing an act constituting a felony under federal law, as is more fully set forth in the Statement of Charges attached hereto, and made a part hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, LUCIO CARDOSO, M.D., shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine

ANY PRACTICE OF MEDICINE IN VIOLATION OF THIS COMMISSIONER'S ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY, DEFINED BY NEW YORK EDUCATION LAW §6512.



PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 19th day of March, 2014, at 10:30 a.m., at Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. The licensee may file a brief and affidavits with the Committee on Professional Conduct. A summary of the Department of Health Hearing Rules is enclosed. 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.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of

Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. 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 FORTH 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
December 27 2013

REDACTED

SUE KELLY
Executive Deputy Commissioner of Health
New York State Department of Health

Inquiries should be addressed to:

Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

IN THE MATTER
OF
LUCIO CARDOSO, M.D.
CO-13-07-3475-A

STATEMENT
OF
CHARGES

LUCIO CARDOSO, M.D., Respondent, was authorized to practice medicine in New York state on October 31, 1988, by the issuance of license number 176686 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 26, 2013, in the United States District Court, District of New Jersey, Respondent was found guilty, after a plea of guilty to one count of Soliciting and Receiving Illegal Remunerations in violation of the federal health care program anti-kickback statute, 42 U.S.C. § 1320a-7b (b) (1), a felony. He was sentenced to a four month term of incarceration, four months home confinement, followed by one year supervised release, a fine of \$30,000, special assessment of \$100 and forfeiture of \$3,075.00.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: *Dec. 27*, 2013
Albany, New York

REDACTED

✓MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his 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), 150 Broadway, Suite 355, Menands, New York 12204-2719. 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. 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 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.
5. Respondent's professional performance may be reviewed by the Director of 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.
6. **Respondent shall practice only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to written approval of the Director of 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 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to 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 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 OPMC prior to Respondent's return to practice medicine in New York State.
7. Respondent shall provide the Director of OPMC with 90 day's notice prior to his return to practice medicine in New York State.
8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he 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.