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Executive Deputy Commissioner

June 16, 2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Hoi Kam, M.D. #79686-053  
FCI Ft. Dix  
P.O. Box 2000  
Ft. Dix, New Jersey 08640

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

**RE: In the Matter of Hoi Kam, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 15-151) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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.

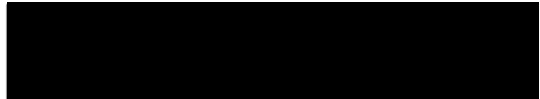
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Hoi Kam, M.D. (Respondent)

A proceeding to review a Determination by a Committee  
(Committee) from the Board for Professional Medical  
Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 15-151

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Jude B. Mulvey, Esq.  
For the Respondent: Pro Se

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c  
(4)(a)(McKinney 2015), the ARB considers whether to impose a penalty against the  
Respondent's license to practice medicine in New York State (License) following the  
Respondent's Federal felony conviction for Conspiracy to Commit Health Care Fraud. After a  
hearing below, a BPMC Committee voted to suspend the Respondent's License for five years, to  
stay the suspension and to limit the Respondent's License to practice in a licensed health care  
facility. The Petitioner then sought administrative review and now asks that the ARB overturn  
the Committee and impose a more severe sanction. After reviewing the hearing record and the  
parties' review submissions, the ARB votes 5-0 to overturn the Committee and to revoke the  
Respondent's License.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq.*, BPMC and its Committees function as a duly authorized  
professional disciplinary agency of the State of New York. The Committee in this case

conducted a hearing under the expedited hearing procedures (Direct Referral Hearing) in PHL §230(10)(p). The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in N. Y. Education Law (EL) §6530(9)(a)(ii) (McKinney 2014) by engaging in conduct that resulted in a conviction under Federal Law. The action against the Respondent began with an order from the Acting Commissioner of Health suspending the Respondent's License summarily (Summary Suspension) pursuant to PHL § 230(12)(b). The Summary Suspension became effective September 16, 2014. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). The Respondent made no appearance at the Direct Referral Hearing, but instead submitted a two-page letter to the Committee. Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee indicated that the Respondent entered a guilty plea in United States District Court for the Eastern District of New York, to felony Conspiracy to Commit Mail Fraud, a violation under Title 18 United States Code § 1349. The Court sentenced the Respondent to one year and one day incarceration, six months home detention, three years supervised release, 200 hours community service and \$2,217,656.38 in restitution. The evidence before the Committee showed that the Respondent allowed his Medicare provider number to be used to submit over 2,000,000.00 in fraudulent claims for payment by Medicare. The Committee noted that the two-page letter from the Respondent attempted to shift blame to physical therapists and a medical biller. The Committee found that the Federal District Court refused to accept that explanation and the Committee refused to accept the explanation as well.

The Committee rejected the Petitioner's request for License revocation. The Committee found that the Respondent caused no patient harm, so the Committee settled for a less severe sanction. The Committee voted to suspend the Respondent's License for five years, but stayed the suspension. Due to the significant fraud, the Committee voted to restrict the Respondent's License permanently to practice in a facility holding licensure under PHL Article 28. The Committee found that this practice restriction would remove the Respondent from a position in which the Respondent could engage in fraudulent billing or financial misconduct.

#### Review History and Issues

The Committee rendered their Determination on February 5, 2015. This proceeding commenced on February 19, 2015, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's one-page letter. The record closed when the ARB received the Petitioner's brief on March 16, 2015.

The Respondent requested that the ARB remove the restriction to practice in an Article 28 facility. The Respondent informed the ARB that the Respondent is in no position for employment at Article 28 facilities because such facilities require practitioners to be eligible to bill Medicare and Medicaid. The Respondent asked that the ARB make the restriction "No insurance billing allowed no matter direct or under other individuals or institutions".

The Petitioner describes the penalty the Committee imposed as inappropriate and urged the ARB to reject the Respondent's attempts to minimize his egregious conduct. The Petitioner contends that the Respondent participated actively in a scheme to defraud the Medicare Program of millions of dollars over five years, and then attempted to minimize his conviction before the

Committee by writing that the conviction was the result of deceptive co-workers taking advantage of the Respondent's sweet nature. The Petitioner points to Hearing Exhibit 5, the indictment to which the Respondent pled guilty. That indictment alleged that the Respondent knowingly and willfully conspired to execute a scheme to defraud Medicare and receive money and property by materially false and fraudulent pretense, representations and promises. The Petitioner noted that the period of incarceration and the amount of restitution demonstrated the serious nature of the Respondent's crime.

#### ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL ' 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of

society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

#### Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the Respondent's criminal conduct made the Respondent liable for disciplinary action against his License pursuant to EL § 6530(9)(a)(iii). The ARB overturns the Committee's Determination to suspend the Respondent's License, to stay the suspension and to restrict the Respondent's practice. The ARB votes 5-0 to revoke the Respondent's License.

The Committee decided against revoking the Respondent's License because they found that the Respondent caused no patient harm. The ARB finds such reasoning unconvincing. There was no harm in this case, but there was no patient care either. The Respondent, however, submitted \$2,000,000.00 in billings to Medicare for services the Respondent never provided. In his letter to the Committee, the Respondent tried to blame his misconduct on others. In his

February 23, 2015 review submission, the Respondent expressed regrets, but the ARB finds the Respondent's regrets centered more on owing the Federal Government over \$2,000,000.00 than on using a medical license to commit fraud.

Fraud in the practice of medicine, standing alone, provides the grounds on which to revoke a medical license, Galín v. DeBuono, 259 A.D.2d 788, 686 N.Y.S.2d 190 (3<sup>rd</sup> Dept. 1999); Adler v. Bureau of Professional Medical Conduct, 211 A.D.2d 990, 622 N.Y.S.2d 609 (3<sup>rd</sup> Dept. 1995). The Respondent engaged in extensive fraud and, at hearing, the Respondent made no concession that he had done anything wrong. The ARB concludes that the Respondent's conduct has demonstrated his unfitness to practice medicine in New York State.

#### ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to suspend the Respondent's License, to stay the suspension and to limit the Respondent's License.
3. The ARB votes 5-0 to revoke the Respondent's License.

Peter S. Koenig, Sr.  
Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.



In the Matter of Hoi Kam, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Kam.

Dated: 6/18/2015, 2015



Linda Prescott Wilson

In the Matter of Hoi Kam, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Dr. Kam.

Dated: June 6, 2015

A large black rectangular redaction box covering the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Hoi Kam, M.D.

Steven Grabcic, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Kam.

Dated: 6/15/ 2015



Steven Grabcic, M.D.

In the Matter of Hoi Kam, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and Order in  
the Matter of Dr. Kam.

Dated: June 7, 2015



Richard D. Milone, M.D.

In the Matter of Hoi Kam, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Kam.

Dated: June 8, 2015



John A. D'Anna, M.D.