



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

Public

February 5, 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. 15-024) 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.

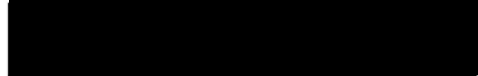
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., 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,


James F. Horan
Chief Administration Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

X

IN THE MATTER

DETERMINATION

OF

AND

HOI KAM, M.D.
CO-14-02-0619A

ORDER

BPMC #15-024

X

COPY

A hearing was held on January 15, 2015, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Hearing, dated September 16, 2014, and an Amended Statement of Charges, dated September 23, 2014, were served upon the Respondent, **HOI KAM, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Janet M. Miller, R.N.**, Chair, **Robert A. Dracker, M.D.**, and **James G. Egnatchik, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Jude B. Mulvey, Esq.**, of Counsel. The Respondent, **Hoi Kam, M.D.**, did not appear, although duly served. Evidence was received 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 when a licensee is charged solely 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 the instant case, the Respondent is charged with professional misconduct pursuant to Education Law §6530 (9) (a)(ii) – by having been convicted of committing an act constituting a crime under federal law. Copies of the Commissioner’s Order, the Notice of Hearing, and the Amended Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

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.”

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. **Hoi Kam, M.D.**, the Respondent, did not appear at the hearing, although he was duly served and notified of the hearing on October 14, 2014. (Petitioner's Exhibits 3 and 3A)
2. **Hoi Kam, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 17, 1990, by the issuance of license number 183043 by the New York State Education Department. (Petitioner's Ex. 4)
3. On or about January 31, 2014, in the United States District Court, Eastern District of New York, Respondent was convicted, following his plea of guilty, of Conspiracy To Commit Health Care Fraud, a felony, in violation of 18 USC § 1349. (Petitioner's Ex. 5)
4. For the above crime the Respondent was sentenced to, among others, one year and one day of incarceration, followed by three years supervised release. In addition, the Respondent was required to complete 200 hours community service, six months home detention and pay \$2,217,656.38 in restitution. (Petitioner's Exhibit 5)

VOTE OF THE HEARING COMMITTEE

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...."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Commissioner's Order and Notice of Hearing and the Amended Statement of Charges (Petitioner's Exhibits 3 and 3A), ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits, notwithstanding the Respondent's absence. The record in this case indicates that the Respondent has responded to the communications from the Department and was aware of this proceeding. It is noted that the Respondent did submit a letter dated November 18, 2014 (Respondent's Exhibit A) which was received into evidence and considered by the panel.

The record herein also shows that on or about January 31, 2014, in the United States District Court, Eastern District of New York, Respondent was convicted, following his plea of guilty, of Conspiracy to Commit Health Care Fraud, a felony, in violation of 18 USC § 1349. (See Petitioner's Ex. 5) The record goes on to show that the Respondent was sentenced to, among others, incarceration of one year and one day, followed by three years supervised release. In addition, the Respondent was required to complete 200 hours community service, six months home detention, and pay some \$2,217,656.38 in restitution.

The panel read the two page letter from the Respondent, Exhibit A, in which he tried to shift the blame for this crime to the physical therapists and the medical biller. The Federal Court did not accept this ploy and neither does the panel. It is noted that well over two million dollars in fraudulent claims were paid by Medicare. It is clear that the Respondent allowed his Medicare number to be used in submitting these claims for services that were never provided and that this fraud alone constituted medical misconduct.

The Department requested a revocation as the appropriate penalty. The panel disagreed. They found that there was no allegation of patient harm and so decided, unanimously, on a lesser penalty. The panel determined that there should be a five year stayed suspension.

In addition, because of the significant fraud, the panel determined that the Respondent's license should be permanently restricted to practice in an Article 28 Institution so that Doctor Kam will not be in a position to engage in fraudulent billing or other financial misconduct. As to the penalty, therefore, the Hearing Committee determined, unanimously, that the people of New York State would be protected by a stayed suspension and a restriction on the Respondent's 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 license of the Respondent to practice medicine in New York State is **Suspended** for a period of five (5) years and this Suspension is **stayed**.
3. The license of the Respondent to practice medicine in New York State is **permanently restricted** to practice in Article 28 Institutions
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Downsville, New York
February 5, 2015



Janet M. Miller, R.N.

Robert A. Dracker, M.D.
James G. Egnatchik, M.D.,

To: Hoi Kam, M.D., #79686-053
FCI Ft. Dix
P.O. Box 2000
Ft. Dix, NJ 08640

Jude B. Mulvey, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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

IN THE MATTER

OF

HOI KAM, M.D.
CO-14-02-0619A

COMMISSIONER'S
ORDER
AND
NOTICE OF
HEARING

TO: Hoi Kam #79686-053
FCI Ft. Dix
PO Box 2000
Ft. Dix, NJ 08640

The undersigned, Howard A. Zucker, M.D., J.D., Acting 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 HOI KAM, M.D, Respondent, New York license number 183043, 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, HOI KAM, 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.

EXHIBIT

1

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 November, 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.

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.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION: (Telephone: 518-402-0748), (henceforth "Bureau of Adjudication") as well as the

Department of Health attorney indicated below, no later than then (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges no less than ten (10) days prior of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, who name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §301(5) of the State of 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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will


require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusion as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

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
16 Sept, 2014


Howard A. Zucker, M.D., J.D.
Acting 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
HOI KAM, M.D.
CO-14-02-0619A

AMENDED
STATEMENT
OF
CHARGES

HOI KAM, M.D., Respondent, was authorized to practice medicine in New York State on July 17, 1990, by the issuance of license number 183043 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 31, 2014, in the United States District Court, Eastern District of New York, Respondent was convicted, following his plea of guilty, of Conspiracy To Commit Health Care Fraud, a felony, in violation of 18 USC § 1349. Respondent was sentenced to, among others, one year and one day incarceration, followed by three years supervised release, 200 hours community service, six months home detention and \$2,217,856.38 restitution.


SPECIFICATIONS OF MISCONDUCT

FIRST 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: *Sept. 23*, 2014
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT

2