



ANDREW M. CUOMO
Governor

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

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

December 8, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ashraf Azir



Nathaniel White, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Ashraf Azir, S.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-289) 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. 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 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,



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

IN THE MATTER
OF
ASHRAF AZIR, S.A.,
Respondent

COPY

DETERMINATION

AND

ORDER

BPMC #15-289

A hearing was held on November 18, 2015, at the offices of the New York State Department of Health ("Department"). Pursuant to Section 230(10)(e) of the Public Health Law, Steven I. Sherman, D.O., M.S., Chairperson, Elisa J. Wu, 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 in this matter. Dawn MacKillop-Soller, Esq., Administrative Law Judge, served as the Administrative Officer. The Department appeared by Richard Zahnleuter, Esq., Acting General Counsel, by Nathaniel White, Esq., of counsel. The brackets refer to exhibits ["Ex."] that were accepted into evidence. A Commissioner's Order and Notice of Referral Proceeding and Statement of Charges dated August 31, 2015, were served upon Ashraf Azir, S.A. ("Respondent").¹ Respondent represented himself at the hearing. After consideration of the entire record, the Hearing Committee issues this Determination and Order, finding that a five year suspension with probation and conditions is appropriate.

¹ Copies of a Commissioner's Order and the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix I and were personally served on Respondent on September 4, 2015, at 108 Hardenburg Lane, East Brunswick, NJ. As a result, the Administrative Law Judge found that jurisdiction was established. [Ex. 2]

BACKGROUND

This case began with an Order by the Commissioner of Health, Howard A. Zucker, M.D., J.D. summarily suspending the Respondent's Specialist Assistant's license pursuant to Public Health Law ("PHL") § 230(12)(b). The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing on circumscribed issues when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The Respondent is charged here 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, in violation of Title 42, United States Code § 1320a-7b(b)(2)(A).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter:

1. Ashraf Azir, S.A., the Respondent, was licensed as a Specialist Assistant on December 3, 1997, by the issuance of license number 000096 by the New York State Education Department.

[Ex. 3]

2. On or about November 25, 2013, in the United State District Court, District of New Jersey, Respondent pled guilty to the felony charge of Federal Health Care Program Illegal Remunerations in violation of Title 42 United States Code § 1320a-7b(b)(2)(A). The Respondent was sentenced on March 6, 2014, to a one-year term of probation, a \$2,500.00 fine, and forfeiture of \$4,229.48. [Ex. 1]

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 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

In the United States District Court of New Jersey, the Respondent pled guilty to making cash payments to a cooperating witness, who held himself out as a physician, in return for the referral of patients to Respondent's MRI facility. This was a federal crime. The specification of misconduct in the Statement of Charges in this proceeding is sustained.

Respondent engaged in a fraudulent kickback scheme to benefit his MRI facility located in Perth Amboy, New Jersey. His conduct demonstrated a lack of integrity in his practice as a Specialist Assistant and a breach of the public's trust. In determining a penalty, the Committee considered Respondent's satisfactory completion of his probation requirements pursuant to his criminal sentence, his prior lack of a criminal history or professional problems, his church involvement, and volunteer efforts. [Ex. A] The Respondent's acknowledgement of his wrongdoing and dedication to the responsible care of his future patients, as demonstrated by the references and letters submitted on his behalf, were also considered.

In light of all of the above, the Committee determined that Respondent should be suspended for a period of five years, the first three of which should be an actual suspension and the last two of which should be stayed. In addition, Respondent is subject to three years of probation with conditions, including but not limited to completion of coursework in appropriate billing practices

and a practice monitor, to begin at the termination of the period of actual suspension. A copy of the Terms of Probation is attached hereto as Appendix II.

ORDER

IT IS HEREBY ORDERED THAT:

1. The factual allegations and specification contained in the Statement of Charges (Appendix I) are SUSTAINED; and
2. Respondent is subject to a five year suspension. The first three years of suspension will be an actual suspension. The last two years of suspension will be stayed. Three years of probation will begin at the termination of the period of actual suspension. The terms of probation (Appendix II) include, but are not limited to, coursework in appropriate billing practices and practice only with a practice monitor during the three years of probation; and
3. Respondent shall comply with all the Terms of Probation attached to this Determination and Order; and
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: Albany, New York
December 4, 2015


Steven I. Sherman, D.O., M.S., Chairperson

David F. Irvine, DHSc, P.A. and
Elisa J. Wu, M.D.

TO: Ashraf Azir


Nathaniel White, Esq.
Attorney for Petitioner

Ashraf Azir, S.A. - Direct Referral

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New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I



IN THE MATTER
OF
ASHRAF AZIR, S.A.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: Ashraf Azir, S.A. [REDACTED] Ashraf Azir, S.A.
Perth Amboy Diagnostic Imaging
607 Amboy Avenue
Perth Amboy, NJ 08861

The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, pursuant to N.Y. 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 Ashraf Azir, S.A. (henceforth "Respondent"), has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached to the Notice of Referral Proceeding or Notice of Hearing and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice as a Specialist Assistant in the State of New York, or practice in any setting under the authority of Respondent's New York license.


Any practice as a Specialist Assistant in violation of this Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29) and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the service of this order and shall end within ninety days thereafter. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law

§230, and N.Y. State Admin. Proc. 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 a date and at a location to be set forth in a written Notice of Hearing or Notice of Referral Proceeding provided to the Respondent contemporaneously with this Order.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE AS A SPECIALIST ASSISTANT 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
31 August, 2015



Howard A. Zucker, M.D., J.D.
Commissioner of Health
New York State Department of Health

Inquiries should be directed to:

Nathaniel C. White
Assistant Counsel
Bureau of Professional Medical Conduct
Coming Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

IN THE MATTER
OF
ASHRAF AZIR, S.A.

NOTICE OF
REFERRAL
PROCEEDING

TO: Ashraf Azir, S.A. Ashraf Azir, S.A.
 Perth Amboy Diagnostic Imaging
607 Amboy Avenue
Perth Amboy, NJ 08861

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on November 18th, 2015, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

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

¹ For GPS purposes, enter "Menands", not "Albany".

Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, 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 twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later than ten days prior to the date 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 whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 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 N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

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

Department attorney: Initial here

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 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, conclusions as to guilt, and a determination. 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 AS A SPECIALIST ASSISTANT IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT 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
August 31, 2015



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Nathanial C. White
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
ASHRAF Y. AZIR, SPECIALIST ASSISTANT

STATEMENT
OF
CHARGES

ASHRAF Y. AZIR, S.A., the Respondent, was authorized to practice as a specialist assistant in New York State on or about December 3, 1997, by the issuance of license number 000096 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about November 25, 2013, in the United States District Court, District of New Jersey, Respondent pleaded guilty to one count of Federal Health Care Program Illegal Remunerations in violation of Title 42 United States Code §1320a-7b(b)(2)(A), a felony. On or about March 6, 2014, Respondent was sentenced to a one year term of probation, a \$2,500.00 fine and forfeiture of \$4,229.48.

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in paragraph A.

DATE: August 31, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and to governing law. Any act of professional misconduct by Respondent as defined by New York Education Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York Public Health Law § 230 (10) or (19), or both.
2. Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502, including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in New York Education Law § 6502(4) to avoid registration and payment of fees.
3. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, at least every six months and as otherwise requested, or within thirty days of any change in the information, the following information in writing:
 - a. a full description of the Respondent's employment and practice;
 - b. all professional and residential addresses and telephone numbers within and outside of New York State;
 - c. any and all information concerning investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency; and
 - d. any and all information concerning investigations, terminations, or disciplinary matters by any institution or facility.
4. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, copies of all applications relating to the practice of medicine, including but not limited to, privileges, insurance, and licensure, in any jurisdiction, concurrent with their submission.
5. Respondent shall cooperate fully with, and will respond within two weeks to, OPMC requests to provide written periodic verification of Respondent's compliance with these terms of probation. Upon the Director of OPMC's request, Respondent shall meet personally with a person designated by the Director.
6. The probation period is for three years, which will be tolled whenever Respondent is not practicing as a Specialist Assistant in New York. If the Respondent leaves practice in New York state, the Respondent shall notify the Director of OPMC, in writing, of the date upon which Respondent leaves

practice as a Specialist Assistant. Respondent shall notify the Director of OPMC, in writing, 90 days prior to his return to practice as a Specialist Assistant in New York state.

7. Respondent shall fulfill all probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health. These conditions include, but are not limited to, Respondent's completion of appropriate billing coursework and a practice monitor.
8. The Director of OPMC, or his/her designee, may review Respondent's professional performance. This review may include but shall not be limited to:
 - a. A review of office records, billing records, films, patient records, hospital charts, and/or electronic records;
 - b. Interviews with or periodic visits with Respondent and/or staff at practice locations or at OPMC offices;
 - c. A review of any determinations, decisions, or investigations by any state medical board.
9. Throughout the period of probation, Respondent shall practice as a Specialist Assistant only when a practice monitor is present in his office. The practice monitor shall be on-site during office hours, unless determined otherwise by the Director of OPMC. The practice monitor shall be proposed by Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall not be a family member or personal friend, or be in a professional relationship, which could pose a conflict with supervision responsibilities.
10. Respondent shall ensure that the practice monitor has a copy of this Determination and Order and is familiar with these terms of probation. The practice monitor must be willing to report to OPMC information concerning the Respondent's practice and conduct. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's medical practice and conduct. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
11. The practice monitor shall submit quarterly written reports to the Director of OPMC, regarding Respondent's practice, including, but not limited to procedures for billing and making payments related to Respondent's medical practice. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, and other such on-duty conduct as the practice monitor deems appropriate to report under the circumstances of this case.
12. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients, and contain all information required by State rules and regulations.

13. Respondent shall comply with these Terms of Probation, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or a violation of these terms, the Director of OPMC and/or the Board for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other proceeding authorized by law, against the Respondent.