



Department of Health

ANDREW M. CUOMO
Governor

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

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

July 28, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kamal Zafar, S.A.
[REDACTED]

Jeffrey J. Conklin, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

NYS Department of Health
Bureau of Accounts Management
ESP-Corning Tower-Room 1717
Albany, New York 12237

RE: In the Matter of Kamal Zafar, S.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-265) 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
KAMAL ZAFAR, S.A.**

**DETERMINATION
AND
ORDER**

BPMC #16-265

COPY

A hearing was held on June 15, 2016, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated May 2, 2016, were served upon the Respondent, **KAMAL ZAFAR, S.A.**

Pursuant to Section 230(10)(e) of the Public Health Law, **C. Deborah Cross, M.D.**, Chair, **Andrew J. Merritt, M.D.**, and **Dennis P. Zimmerman, M.S., C.R.C.**, 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 **Richard J. Zahnleuter, Esq.**, General Counsel, by **Jeffrey J. Conklin, Esq.**, of Counsel. The Respondent, **Kamal Zafar**, 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)(i)¹ by having been convicted of committing an act constituting a crime under the law of New York State.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

¹ It is noted that the Statement of Charges in this case (Appendix 1) makes reference to a different statute, 6520(9)(a)(i). This is deemed a typographical error as the Department's attorney indicated the correct statute at the hearing. (See Transcript page 10, line 1)

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. Kamal Zafar, S.A., the Respondent, did not appear at the hearing, although he was duly served and notified of the hearing on May 12, 2016. (Petitioner's Exhibit 2.)

2. Kamal Zafar, S.A., the Respondent, was authorized to practice as an orthopedic specialist assistant in New York State on or about June 14, 2000, by the issuance of license number 000113 by the New York State Education Department. (Petitioner's Exhibit 3)

3. On or about December 16, 2014, in the Suffolk County Court, State of New York, Respondent was convicted of violating of Section 190.60 of the New York State Penal law, Scheme to Defraud, 2nd degree, a Class A misdemeanor, based upon a guilty plea. The Respondent engaged in a scheme to defraud multiple lending institutions by generating fraudulent real estate documents and stealing the proceeds. (Petitioner's Exhibit 4)

4. For this crime, the Respondent was sentenced to 3 years' probation; 260 hours of community service; and ordered to pay a fine \$250.00 for administrative charges. (Petitioner's Exhibit 4)

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under the law of New York State..."

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 Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for due diligence in the 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 Respondent was convicted of violating of Section 190.60 of the New York State Penal law, Scheme to Defraud, 2nd degree, a Class A misdemeanor, based upon a guilty plea. It appears from the record that the Respondent engaged in a scheme to defraud multiple lending institutions by generating fraudulent real estate documents and stealing the proceeds.

Respondent did not appear at the hearing, and the record does not contain any evidence of mitigating circumstances or remorse. The panel noted that Respondent was personally served and apparently chose not to attend or request an adjournment. The panel based its determination on the documentation in the record. The panel reviewed the entire record in this matter and, considering the full range of penalties available pursuant to PHL §230-a, determined the appropriate penalty to be a \$1,000 fine and a suspension of his license to practice as an Orthopedic Specialist Assistant until the probation imposed by the Suffolk County Court is successfully completed and Respondent provides the Director of OPMC with verification of completion of that probation and payment of all fines and fees due that Court.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The Respondent's license to practice as an Orthopedic Specialist Assistant in New York is **Suspended** until such time as he provides the Director of OPMC with verification of the successful completion of the Suffolk County probation and payment of all fines and fees due that Court.
3. A fine of One Thousand Dollars (\$ 1,000.00) is imposed on the Respondent. The fine is payable in full within 90 days of the effective date of this Order. Payment must be submitted to the New York State Department of Health, Bureau of Accounts

12237. Failure to pay the fine on time will subject the Respondent to all provisions of law relating to debt collection by New York State, including 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 and licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).

DATED: Elmsford, New York
June 23, 2016



C. Deborah Cross, M.D., Chair

Andrew J. Merritt, M.D.
Dennis P. Zimmerman, M.S., C.R.C.,

To: Kamal Zafar, S.A.



Jeffrey J. Conklin, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

NYS Department of Health
Bureau of Accounts Management
Corning Tower, Room 1717
Empire State Plaza
Albany, New York 12237

APPENDIX 1

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

EXHIBIT

1

IN THE MATTER
OF
KAMAL ZAFAR, S.A.

NOTICE OF
REFERRAL
PROCEEDING

TO: Kamal Zafar, S.A.
[REDACTED]

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 June 15, 2016 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 Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150

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

Broadway - Suite 510, Albany, NY 12204-2718, 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 at least 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. You may also file a written brief and affidavits with the Committee. All such documents 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, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge,

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

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 AN ORTHOPEDIC 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
May 2, 2016


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jeffrey J. Conklin
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER

OF

KAMAL ZAFAR, S.A.

STATEMENT

OF

CHARGES

KAMAL ZAFAR, S.A., the Respondent, was authorized to practice as an orthopedic specialist assistant in New York State on June 14, 2000, by the issuance of license number 000113 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 18, 2014, in the Suffolk County Court, State of New York, Respondent was convicted of violation of Section 190.60 of the New York State Penal Law, Scheme to Defraud, 2nd degree, a Class A misdemeanor, based upon a guilty plea. The Respondent engaged in a scheme to defraud multiple lending institutions by generating fraudulent real estate documents and stealing the loan proceeds. Respondent was sentenced to 3 years' probation; 280 hours of community service; and ordered to pay a \$250.00 for administrative charges.

SPECIFICATION OF MISCONDUCT

Respondent is charged with committing professional misconduct as defined in New York Education Law Section 8520(9)(a)(i) by having been convicted of committing an act constituting a crime under the law of New York State law as alleged in the facts of the following:

A. The facts in Paragraph A.

DATE: Albany, New York
May 2, 2016


MICHAEL A. HISER, ESQ.
Deputy Counsel
Bureau of Professional Medical Conduct