

IN THE MATTER OF * BEFORE THE MARYLAND STATE
JAMES AN NGUYEN, M.D. * BOARD OF PHYSICIANS
LICENSE # D39748 * CASE # 2004-0638

FINAL DECISION AND ORDER

This case arose from information received by the Maryland Board of Physicians (the "Board") that James An Nguyen, M.D., license number D39748, pled guilty to one count of felony Medicaid Fraud in violation of Md. Criminal Law Code Ann. §8-509 in the Circuit Court for Baltimore City.

On October 13, 2005, the Office of the Attorney General filed with the Board a Petition to Revoke Dr. Nguyen's Medical License, pursuant to Md. Code Ann., Health Occ. ("H.O.") §14-404(b)(2). That section provides:

On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime of moral turpitude, the Board shall order the revocation of a license on the certification by the Office of the Attorney General.

Attached to the Petition were the following exhibits: Criminal

Information; certified copy of the Docket Entries; the Probation/Supervision Order; the Judgment of Restitution; the Plea Agreement; the Statement of Facts; the Notice of Recorded Judgment; and the case history/tracking records.

On October 17, 2005, Dr. Nguyen was served with a copy of the Petition with exhibits and a Show Cause Order. That Order ordered him to show cause by November 20, 2005, why his medical license should not be revoked pursuant to H.O. §14-404(b)(2). On December 5, 2005, the Board received Dr. Nguyen's Answer to Show Cause Order. The Board did not receive a response from the State.

On December 21, 2005, the Board convened for a final decision in the case. After consideration of the Petition with exhibits, and Dr. Nguyen's response, the Board issues this Final Decision and Order.

FINDINGS OF FACT

Dr. Nguyen was originally licensed to practice medicine in the State of Maryland on March 14, 1990, and at all times relevant hereto has held a license to practice medicine in the State of Maryland.

On or about April 28, 2005, Dr. Nguyen was charged pursuant to a Criminal Information in the Circuit Court for Baltimore City with felony Medicaid Fraud, in violation of Md. Criminal Law Code Ann. §8-509(2). The Criminal Information alleged, in pertinent part, the following:

James An Nguyen, from on or about November 1, 2002, and pursuant to one scheme and continuing course of conduct, and in Baltimore City did knowingly defraud the Maryland Medical Assistance Program, which is a State Medicaid program established pursuant to Title XIX of the Social Security Act of 1939, in that Nguyen knowingly and willfully obtained by means of a false representation money in connection with the payment for a health care service that wholly is reimbursed by a State health plan, and involving more than \$500 in the aggregate, all in violation of Criminal Law Article §8-509, of the Annotated Code of Maryland, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government, and dignity of the State.

On or about June 23, 2005, Dr. Nguyen appeared in the Circuit Court for Baltimore City and entered a plea of guilty to the charge of felony Medicaid Fraud, in violation of Md. Criminal Law Code Ann. §8-509.

In support of the guilty plea, the State submitted a statement of facts on the record, asserting that Dr. Nguyen unlawfully entered into an arrangement with a health services provider, known as The Bridges Project ("TBP"), in which he permitted TBP to use his Medicaid provider number when it submitted billings to Medicaid for services that were purportedly provided to Medicaid recipients. In these requests for remuneration, TBP represented that Dr. Nguyen personally provided such services when in fact, TBP employees purportedly provided them. Pursuant to the agreement, TBP hired a number of individuals to provide therapy services. Most of these individuals were not licensed to provide such services, Dr. Nguyen agreed to receive 20% of the remuneration TBP recovered for such billings.

Between October 2002 and March 2004, TBP submitted over 18,000 billings under D. Nguyen's provider number that were not personally provided or supervised by Dr. Nguyen. In return, Medicaid paid Dr. Nguyen a total of \$1,851,322.17 for billings TBP submitted under his provider number. Of that amount, the State Medicaid paid \$1,699,809.00 for services that Dr. Nguyen neither performed nor supervised. Dr. Nguyen knew that it was improper and illegal to allow TBP to use his Medicaid provider number to bill for services performed by individuals whom he was not supervising. Pursuant to his arrangement with TBP, Dr. Nguyen received \$340,000.00 for services he did not perform or supervise.

Dr. Nguyen, by allowing his Medicaid provider number to be used in such a fashion, was instrumental in causing a loss to the State of Maryland of \$1,699,809.00.

Pursuant to his guilty plea, Dr. Nguyen was sentenced to a term of incarceration of five years, all of which was suspended, but for an 18-month period of confinement, to be served through home detention. Dr. Nguyen was ordered to pay restitution on the date of his guilty plea in the amount of \$100,000.00. Dr. Nguyen was also sentenced to a term on probation of five years, to commence after his release from confinement. Dr. Nguyen was further ordered to pay additional restitution in the amount of \$205,000.00, to be paid during his period of probation. Dr. Nguyen was also subject to additional terms and conditions of probation, including

but not limited to filing amended income tax returns for the year 2003; and cooperating in the investigation of other entities participating in this criminal enterprise.

Dr. Nguyen did not file a timely appeal of his criminal conviction. Pursuant to Md. Rule 8-202(a), a notice of appeal must be filed within 30 days after entry of judgment or order from which the appeal is taken. Dr, Nguyen did not file a notice of appeal of his criminal conviction within the time period required under Maryland law.

CONCLUSIONS OF LAW

Dr. Nguyen's plea of guilty to felony Medicaid Fraud constitutes a crime involving moral turpitude. See *Maryland State Board of Physician Quality Assurance v. Felsenberg*, 351 Md. 288, 295 (1998) (crimes involving fraud and deceit are crimes involving moral turpitude); *Bar Ass'n of Baltimore City v. Seigel*, 275 Md. 521 (1975) (crime of moral turpitude is one involving fraud, deceit, dishonesty); *Atty. Grievance v. Walman*, 280 Md. 453, 459-60 (1977) (a crime of moral turpitude is characterized by dishonesty, fraud or deceit); *Gordon v. U.S.*, 127 U.S. App. D.C. (D.C. Cir. 1967), *cert. denied*, 390 U.S. 1029 (1968) (deceit, fraud, cheating, or stealing are universally regarded as conduct which reflects adversely on honesty and integrity); *Oltman v. Maryland State Board of Physicians*, 162 Md. App. 457 (2005) (obtaining prescription drugs free of charge by fraud is a crime of moral turpitude).

The Board has previously held that felony Medicaid Fraud is a crime of moral turpitude. See *In the Matter of Alfredo J. Herrera, M.D.*, Case Numbers 97-0008 and 2001-0426, dated November 28, 2001.

Dr. Nguyen's conviction for felony Medicaid Fraud, in violation of Md. Criminal Law Code Ann. §8-509, constitutes a crime of moral turpitude. The Medical Practice Act at Md. Health Occ. Code Ann. §14-404(b)(2), provides that, in the absence of an appeal, a physician's license must be revoked upon conviction of a crime of moral turpitude.

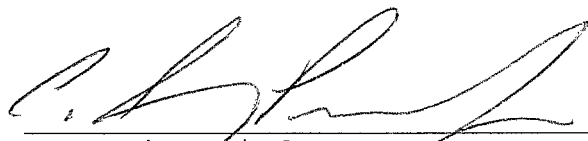
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 1st day of February, 2006, by an affirmative vote of the Board

ORDERED that the license of the Respondent, James An Nguyen, M.D., to practice medicine in the State of Maryland is hereby **REVOKED** under Md. Code Ann., Health Occ. §14-404(b)(2) and it is further;

ORDERED that this is a Final Decision and Order of the Maryland Board of Physicians and, as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. §10-611 et seq. (2004)

2/1/06
Date


C. Irving Pinder, Jr.
Executive Director

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. §14-408, Dr. Nguyen has the right to take a direct judicial appeal. Any appeal shall be made as provided for judicial review of a final decision in the Administrative Procedure Act, State Government Article, and Title 7, Chapter 200 of the Maryland Rules.

If Dr. Nguyen files an appeal, the Board is a party and should be served with the court's process. In addition, if an appeal is filed, Dr. Nguyen is requested to send a copy to the Board's counsel, Thomas W. Keech, Esq. At the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is no longer a party to this case and need not be served or copied.