



Department of Health

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

July 10, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Xingjia Cui, M.D.
c/o Andrew M. Knoll, Esq.
Cohen, Compagni, Beckman, Appler
& Knoll, PLLC
507 Plum Street, Suite 310
Syracuse, New York 13204

Marc S. Nash, Esq
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Xingjia Cui, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-174) 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: cmg
Enclosure

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

COPY

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IN THE MATTER : DETERMINATION
OF : AND
XINGJIA CUI, M.D. : ORDER
: BPMC-20-174
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A hearing was held by videoconference on June 11, 2020. Pursuant to §230(10)(e) of the Public Health Law (PHL), Deborah Cross, M.D., chairperson, Michael Reichgott, M.D., Ph.D., and Georgia K. Millor, Ph.D., R.N. duly designated members of the State Board for Professional Medical Conduct (BPMC), served as the hearing committee in this matter. Jean T. Carney, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Associate Counsel Marc S. Nash. The Respondent appeared in person, and through his attorney, Andrew M. Knoll, Esq. Jurisdiction over the Respondent was obtained by service of the Notice of Referral Proceeding and Statement of Charges. The Hearing Committee received and examined documents from the Department (Exhibits 1-5), and the Respondent (Exhibits A-E). The Respondent testified in his own behalf; Ahmad Bilal, M.D., and Anthony Vasquez also testified on behalf of the Respondent. A stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the

charges that the Respondent committed professional misconduct in violation of Education Law §6530(9)(a)(ii); and that pursuant to PHL §230-a, the penalties of suspension of the Respondent's license for three years, to be stayed and run concurrently with the Respondent being placed on probation for three years, are appropriate.

BACKGROUND

The Department brought the case pursuant to PHL §230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Education Law §6530(9).

The Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(a)(ii), having been convicted of an act constituting a crime under federal law.

Under PHL §230(10), the Department had the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. The Respondent holds a license to practice medicine issued on July 10, 2006; license number 240967. (Department Exhibit 3).

2. On July 23, 2019, the Respondent pled guilty in United States District Court, Western District of New York, to Health Care Fraud pursuant to 18 U.S.C. §1347, and Fraud and False Statements in a Tax Return pursuant to 26 U.S.C. §7206(1). The Respondent was sentenced to one year and one day in prison, two years post release supervision, and restitution in the amount of \$597,823.00. (Department Exhibit 4).

3. The convictions were based on the results of an investigation that revealed the Respondent had submitted claims to insurers for services not provided. In addition, the Respondent reported his business income on his 2014 federal tax return as \$79,062, when it was at least \$218,835. (Department Exhibit 5).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee concludes that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law §6530(9)(a)(ii).

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATIONS

The Department met its burden of proving by a preponderance of the evidence that the Respondent committed professional misconduct as alleged in the Statement of Charges. It is undisputed that the Respondent was convicted of committing Health Care Fraud pursuant to 18 U.S.C. §1347, and committing Fraud and False Statements in a Tax Return pursuant to 26 U.S.C. §7206(1). Therefore, the charge is sustained.

In considering the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, limitation of the license, and the imposition of monetary penalties; the Hearing Committee notes that the Respondent has paid his debt to society by serving his prison term and paying the restitution imposed. The Hearing Committee also appreciated the testimony of Mr. Vasquez, the father of a former patient, and the supportive letters submitted by former patients. By all accounts, the Respondent was a compassionate and caring psychiatrist to his patients.

However, the Respondent's actions demonstrated a significant disregard for acceptable billing practices. The Respondent asserted that he misunderstood the new Current Procedural Terminology (CPT) codes when they changed in 2013. However, the Respondent had ample opportunity to learn the correct coding, yet failed to take any of the classes offered. This error in judgment resulted in improper coding and caused thousands of dollars in overpayments. In addition, the evidence showed that the Respondent intermingled his business and personal funds; failed to maintain accurate and complete financial records; and exhibited a lack of understanding regarding the management of a professional practice.

The Hearing Committee determined that the Respondent should not return to practice without oversight. Consequently, the Respondent's medical license in New York State shall be suspended for three years, with the suspension stayed; that the Respondent

shall be placed on probation for three years, to run concurrently with the stayed suspension, and subject to the terms and conditions as attached hereto in Appendix A; and that the Respondent shall complete continuing medical education courses in billing and ethics.

ORDER


IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct as set forth in the Statement of Charges are sustained;
2. The Respondent's license to practice medicine in New York State is wholly suspended for three years, with the suspension stayed; and
3. The Respondent shall be placed on probation for three years, to run concurrently with the stayed suspension; and
4. The Respondent shall complete continuing medical education courses in medical billing and ethics; and
5. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL §230(10)(h).

DATED: Albany, New York

July 2

, 2020


Deborah Cross, M.D., Chairperson
Michael Reichgott, M.D., Ph.D.
Georgia K. Millor, Ph.D., R.N.

To: Xingjia Cui, M.D.
c/o Andrew M. Knoll, Esq.
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APPENDIX A

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status; and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, OPMC, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of her employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within 30 days of each action.

3. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Respondent shall personally meet with a person designated by the Director of OPMC as directed.

4. Any civil penalty not paid by the date prescribed herein shall be subject to provisions of law relating to debt collection by New York State. This includes but is not limited to the 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 or licenses. (Tax Law §171[27]; State Finance Law §18; CPLR §5001; Executive Law §32).

5. The period of probation shall be tolled during periods in which Respondent is not actively engaged in the practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.

7. During the probationary period, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

- a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly; and shall examine a selection (no

fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

- b. The Respondent shall be solely responsible for all expenses associated with the practice monitoring including fees, if any, to the monitoring physician. The Respondent shall cause the practice Monitor to report quarterly, in writing, to the OPMC Director. The Respondent shall maintain malpractice insurance coverage with limits no less than two million dollars per occurrence, and six million dollars per policy year; in accordance with Public Health Law §230(18)(b). Proof of coverage shall be submitted to the OPMC Director prior to the Respondent's return to practice.

8. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations.

9. Respondent shall enroll in and complete a continuing education program subject to the written approval of the Director of OPMC and be completed within the first year of probation.

10. The Respondent shall comply with all terms, conditions, restrictions, limitations, and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

11. The Respondent shall make available for review by a third-party billing monitor, any and all office and account records, as directed by OPMC. Such billing monitor shall be proposed by the Respondent and approved in writing by the OPMC Director. The Respondent shall cooperate fully in the process. The review will determine whether the Respondent's medical billing and related documentation practices are conducted in a manner that complies with all Federal, State and local statutes and regulations regarding billing for medical services; and is accurate under all relevant circumstances as to the services rendered, and the clinical basis for such services. The Respondent shall be solely responsible for all expenses associated with the monitoring including fees, if any, to the billing monitor. The Respondent shall cause the billing monitor to report quarterly, in writing, to the OPMC Director. Any perceived deviation from proper billing practices or refusal to cooperate with the billing monitor shall be reported by the billing monitor to OPMC within 24 hours.

APPENDIX B

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

IN THE MATTER
OF
XINGJIA CUI, M.D.

STATEMENT
OF
CHARGES

XINGJIA CUI, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 10, 2006, by the issuance of license number 240967 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 22, 2019, in the U.S. District Court, Western District of New York, Respondent was convicted of two felonies, Health Care Fraud [18 U.S.C. § 1347] and Fraud and False Statements in a Tax Return [26 U.S.C. § 7206(1)]. Pursuant to this conviction, Respondent was sentenced to twelve months plus one day incarceration followed by two years' supervised release, assessed a \$200.00 fine and directed to pay restitution in the amount \$597,823.00.


SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent violated Education Law § 6530(9)(a)(ii) by having been convicted of an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATE: February 4, 2020
Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct

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