

**IN THE MATTER OF** \* **BEFORE THE MARYLAND**  
**HOWARD GOLDSTEIN, M.D.** \* **STATE BOARD OF PHYSICIANS**  
**Respondent** \* **Case Number 2011-0358**  
**License Number D69728** \*

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**FINAL DECISION AND ORDER**

**PROCEDURAL HISTORY**

In November, 2010, Howard R. Goldstein, M.D. (“Dr. Goldstein”) pled guilty to and was convicted of knowingly and willfully making a false statement to a government agency, in violation of 18 U.S.C. § 1001, in federal district court in Missouri.

The court documents supporting his guilty plea showed that Dr. Goldstein knowingly and willfully lied to Federal Bureau of Investigation (“FBI”) agents for the purpose of (1) influencing their investigation into his Medicare billing claims; (2) concealing critical information about his prior knowledge of and education about appropriate Medicare coding and documentation; and (3) covering up his long-term Medicare overbilling activities.

The federal court (Webber, J.) sentenced Dr. Goldstein to five months imprisonment and two (2) years of supervised release and fined him \$30,000. Dr Goldstein also paid \$830,229 in a related civil settlement agreement with the U.S. government to settle his claims for payment to the Medicare program. Dr. Goldstein did not appeal his criminal conviction and his guilty plea was not set aside.

As a result of Dr. Goldstein’s guilty plea and conviction, the Office of the Attorney General filed with the Board a Petition to Revoke his medical license and a Show Cause Order on January 26, 2012, pursuant to § 14-404(b) of the Health Occupations Article. The statute provides:

- (1) 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 licensee or holder of a temporary license if the licensee or holder of a temporary license 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.
- (2) 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 involving moral turpitude, the Board shall order the revocation of a license or temporary license on the certification by the Office of the Attorney General.

Md. Code Ann., Health Occ. (“H.O”) § 14-404(b) (2009). Enclosed with the petition were the following certified documents: Criminal Docket Entries; Criminal Information; Plea Agreement and Stipulation of Facts; Judgment in a Criminal Case; and Sentencing Transcript.

The Show Cause Order required that Dr. Goldstein provide an answer to the petition, in writing, by March 1, 2012. In a written response to the Board dated February 13, 2012, Dr. Goldstein did not dispute his guilty plea and conviction, and enclosed 30 letters of support from family members, former employers, former patients and friends. On February 27, 2012, the State filed a Reply. On May 8, 2012, the Board issued an Order dismissing charges against Dr. Goldstein. The State filed a Motion for Reconsideration on May 14, 2012, requesting that the Board reconsider and vacate its Order of Dismissal. Dr. Goldstein filed a written response on May 21, 2012. Both the State and Dr. Goldstein appeared before the Board for a hearing on July 25, 2012 pursuant to the Board’s regulations. COMAR 10.32.02.04 E (3).

The Board reviewed all of the documentary evidence submitted by the State and by Dr. Goldstein, and considered all of the parties’ oral arguments made on July 25, 2012. Having reviewed and considered the entire record and the written submissions of the parties in this case, the Board issues this Final Decision and Order.

## FINDINGS OF FACT

Based on the criminal court documents, the Board finds the following facts by a preponderance of the evidence:

1. Dr. Goldstein is a physician licensed by the Board since 2009. At all times relevant to the proceedings in this case, Dr. Goldstein held a license to practice medicine in the State of Maryland, as well as a license to practice medicine in the State of Missouri, where he specialized in internal medicine in office and hospital settings.
2. In April, 2010, pursuant to a criminal Information, the United States government in St. Louis, Missouri, charged Dr. Goldstein (Criminal Case No. 4:10-CR-525-ERW) with one count of knowingly and willfully making a materially false statement and representation to FBI agents, for the purpose of influencing their investigation into his claims for payment to the Medicare program, in violation of 18 U.S.C. § 1001.<sup>1</sup>
3. Dr. Goldstein was represented by counsel throughout his criminal proceedings.
4. In a plea agreement dated October 12, 2010, Dr. Goldstein pled guilty to that count and to violating 18 U.S.C. § 1001. In a Stipulation of Facts contained in his plea agreement, Dr. Goldstein further stipulated and agreed that all the facts in the criminal Information filed in his case were true and that the government would prove all the following facts beyond a reasonable doubt:
  - (a) During 2005-2009, among other billing codes, Dr. Goldstein submitted claims to the Medicare and Medicaid programs under current procedural terminology (“CPT”) codes 99231, 99232, and 99233 for delivering patient care in a hospital. In 2008, Medicare reimbursement to local physicians was \$28 for code 99231 claims, \$50 for code 99232 claims, and \$71 for code 99233 claims;
  - (b) Under Medicare billing guidelines, physicians typically spend 15 minutes at the patient’s bedside and on the hospital floor before billing code 99231, 25 minutes at the patient’s bedside and on the hospital floor before billing code 99232, and 35 minutes at the patient’s bedside and on the hospital floor before billing code 99233.

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<sup>1</sup> 18 U.S.C. § 1001 provides:

**§ 1001. Statements or entries generally**

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
  - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
  - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- shall be fined under this title, imprisoned not more than 5 years or . . . both. . . .

18 U.S.C. § 1001.

- (c) These codes also require the physician to conduct 2 of these 3 “key components” before requesting program payments: (1) a problem focused interval history; (2) a problem focused examination; and (3) medical decision making of increasing complexity depending on the code selected;
- (d) During January through June of 2007, Dr. Goldstein’s former employer audited and reviewed his Medicare claims and use of CPT billing codes 99231-33, and had serious concerns about his billing based on the scant and illegible documentation that Dr. Goldstein created to support these services in the medical records;
- (e) In May, 2007, Dr. Goldstein attended a meeting with his former employer to discuss his Medicare billing and documentation issues. His former employer seriously considered firing Dr. Goldstein, but ultimately decided to keep him employed while requiring him to attend a Medicare coding education session held in June, 2007;
- (f) In September, 2007, Dr. Goldstein was advised that “cloning” or repeatedly “cutting and pasting” records with the same treatment information regarding individual patients may not meet payor requirements from a compliance point of view and will lead to denial of payment for services and recoupsments of all overpayments by the Medicare program;
- (g) In March, 2009, during routine peer review activities involving Dr. Goldstein, another physician reviewed the medical care that Dr. Goldstein had provided to a hospitalized patient;
- (h) The peer review physician noted that Dr. Goldstein’s treatment notes describing post-admission hospital care had the same content for every day of treatment, just repeating the same information as if the note had been “cut and pasted” from one day to the next. The peer reviewer then examined the total amount of patients seen by Dr. Goldstein and discovered that given the total number of patients at issue and Dr. Goldstein’s total time within the hospital, Dr. Goldstein spent only one or two minutes seeing each patient, not the 15, 25 or 35 minutes required by the CPT codes;
- (i) The peer reviewer reported Dr. Goldstein to the employer’s corporate compliance officer, which then conducted an investigation. In September, 2009, Dr. Goldstein’s former employer disclosed the information to the U.S. Government;
- (j) Special agents from the FBI and the Office of Inspector General for the U.S. Department of Health and Human Services (“HHS-OIG”) began an investigation to determine if there were provable violations of submitting false claims, making a false statement to the Medicare program, and health care fraud by Dr. Goldstein;
- (k) On April 20, 2010, these special agents conducted an interview in St. Louis, Missouri with Dr. Goldstein for the purpose of determining his knowledge of Medicare billing

requirements for CPT codes 99231, 99232 and 99233, and the circumstances behind the Medicare coding sessions required by his former employer in 2007;

- (l) These issues were material to the agents' investigation, because they could show that Dr. Goldstein's Medicare billing conduct during 2009 was knowing, intentional and willful given his prior education regarding billing requirements and the consequences of non-compliance;
- (m) At that interview, Dr. Goldstein knowingly and willfully made a materially false statement to the FBI, for the purpose of influencing their investigation into his payment claims to the Medicare program;
- (n) Specifically, Dr. Goldstein falsely stated to the agents that he had no concerns in May, 2007 about Medicare billing or documentation issues because his former employer only raised issues regarding patient referral and how his personality "fit" with other employees, all the while knowing that this statement was not true. In truth and in fact, as Dr. Goldstein well knew, his former employer specifically raised Medicare documentation issues from January through September, 2007 while conducting Medicare audits of his patient records and considering whether to terminate his employment. Dr. Goldstein's statement was material in that the FBI was investigating his knowledge of Medicare billing requirements before 2009, making his false statement relevant to their investigation.

- 5. In his plea agreement, Dr. Goldstein admitted that he knowingly, voluntarily and intentionally made a false statement to the FBI, that the statement was material to and within the jurisdiction of the FBI, and that the FBI's function includes investigating health care fraud.
- 6. In entering into the plea agreement, Dr. Goldstein was fully advised of and understood the due process and jury trial rights that he was giving up by pleading guilty. Dr. Goldstein also knowingly waived his right to appeal his conviction and any issues relating to the factual basis for his plea. In addition, Dr. Goldstein acknowledged that his plea was voluntary and made of his own free will because he was, in fact, guilty of the criminal conduct set forth in the criminal Information.

#### **Civil Settlement, Exclusion from the Medicare Program, Forfeiture and Sentencing**

- 7. In a related civil settlement on October 12, 2010, Dr. Goldstein agreed to reimburse the Government \$830,329 to resolve the Medicare payment claims he had submitted. In a separate civil settlement agreement, Dr. Goldstein's former employer also reimbursed the United States an additional \$865,812 for his Medicare billing charges, described by Dr. Goldstein's attorney at his sentencing hearing as "ill-gotten gains from the government program."
- 8. Dr. Goldstein was excluded from participation in the Medicare program for 5 years.

9. Dr. Goldstein did not contest an additional administrative forfeiture of \$100,000.
10. In exchange for Dr. Goldstein's guilty plea, the Government agreed not to further prosecute his false statement to the FBI, or to prosecute criminally his claims for Medicare reimbursement from January, 2007 through March, 2009, using CPT codes 99231, 99232 and 99233, and other CPT codes referenced in the civil settlement agreement. Dr. Goldstein and the Government acknowledged that these agreements, in part, led to the guilty plea in this case;
11. At sentencing, Dr. Goldstein, through his counsel, also specifically admitted that he had lied to the FBI in response to their questions about his Medicare billing, that he had intentionally coded patient charts at a higher level that did not correspond to the actual service the patients received, and that he knew at the time he coded them that he was not spending the requisite amount of time under Medicare reimbursement protocols.
12. On January 5, 2011, the federal Court sentenced Dr. Goldstein to five months in prison, and two years of supervised release. The Court also imposed a fine of \$30,000 and an assessment of \$100. The Court stated that Dr. Goldstein made \$784,343 in 2009, and that "there was plenty of reason to believe that he was motivated to generate a lot of money for his employer because he was a direct beneficiary of that."

### CONCLUSIONS OF LAW

The issue before the Board is whether Dr. Goldstein's guilty plea and conviction for knowingly and willfully making a false statement to the FBI agents involved moral turpitude under Maryland law, based on the documents from the federal criminal court that the Board considered pursuant to its regulations. COMAR 10.32.02.04. After reviewing Dr. Goldstein's arguments, and the arguments submitted by the Administrative Prosecutor for the State, the Board decides this legal issue as follows.

Moral turpitude, as defined by Maryland appellate courts, includes not only fraud but "intentional dishonesty for purposes of personal gain." *Oltman v. Maryland State Board of Physicians*, 162 Md. App. 457, 486 (2005), quoting *Attorney Grievance Comm'n v. Walman*, 280 Md. 453, 459-60 (1977) (citations omitted); see also *Attorney Grievance Comm'n v. Klauber*, 289 Md. 446, 457 (1981) (the term "moral turpitude" connotes a fraudulent or dishonest intent). The Board agrees with Dr. Goldstein that where the elements of a crime do not include fraud, or

where a conviction on its face does not establish moral turpitude, the Board's determination of moral turpitude "depends on the facts of the individual case." *Walman*, 280 Md. at 462.

With respect to Board licensure and discipline, Maryland appellate courts have also held that the term "moral turpitude" is more broadly defined than in a witness impeachment context. *Ricketts v. State*, 291 Md. 701, 711-12 (1981); "[W]hat constitutes a crime of moral turpitude may involve different considerations compelling different results in different circumstances." *Ricketts*, 291 Md. at 711; *Oltman*, 162 Md. App. at 483, 485 (the concept of moral turpitude is rather broad in the context of a licensing board's review of the conduct of its licensee); *Stidwell v. Maryland State Board of Chiropractic Examiners*, 144 Md. App. 613, 619 (2002) (the expression "moral turpitude" strikes the broader cord of public confidence in the administration of government). Thus, a licensing board may legitimately find that a criminal act which destroys the public's confidence in the profession is a crime of moral turpitude. *Stidwell*, 144 Md. App. at 619.

#### Dr. Goldstein's False Statement Involved Moral Turpitude

The facts of this case, as documented in the plea agreement, criminal Information and sentencing transcript showed that the U.S. Government investigated allegations that Dr. Goldstein engaged in health care fraud from 2007 to 2009, even after he received Medicare coding education sessions from his employer in 2007. Dr. Goldstein submitted multiple Medicare bills that ignored compliance requirements, received significant monetary reimbursement to which he was not entitled over a prolonged period of time from 2007 to 2009 and which he was ultimately required to reimburse to the government. The criminal documents also showed that Dr. Goldstein intentionally lied to FBI agents when they questioned him about problems with his Medicare billing, he minimized and mischaracterized concerns and problems

that had been raised by his former employer, and knew that his response to the FBI was false when he made it. Because the FBI agents were trying to determine Dr. Goldstein's knowledge of Medicare billing requirements before 2009, and the circumstances behind the Medicare coding education sessions required by his former employer in 2007, his answers were material to the FBI investigation as they would have triggered further investigation of his billing and coding practices. These practices revealed his intentional coding of patient charts and billing to Medicare at higher levels of care than he provided to the patients.

In so doing, Dr. Goldstein deliberately concealed critical information about his prior knowledge of and education about appropriate CPT coding and documentation. His criminal offense was calculated to keep the FBI in the dark about his long-term Medicare overbilling activities for a three-year period. The facts and circumstances of Dr. Goldstein's crime show that he received Medicare reimbursement to which he was not entitled at the program's expense, and that he lied to cover up the reality of this reimbursement. Dr. Goldstein's false statement therefore, was "intentional, or not innocent in its purpose, or not accidental." *Board of Dental Examiners v. Lazell*, 172 Md. 314, 322 (1937). Thus, the underlying facts of Dr. Goldstein's criminal conduct show his "intentional dishonesty for purposes of personal gain" and are sufficient for the Board to conclude that his crime involved moral turpitude under Maryland law. *Walman*, 280 Md. at 459-60, 462; *See also Oltman*, 162 Md. App. at 486; *Klauber*, 289 Md. at 457. Dr. Goldstein's criminal offense also undermines the public's confidence in the profession of medicine. *Stidwell*, 144 Md. App. at 619.

#### Dr. Goldstein May Not Relitigate His Guilty Plea and Criminal Conviction

Although he took responsibility for lying to FBI agents before the federal criminal court, Dr. Goldstein now presents arguments and excuses that, if true, would contradict his guilty plea.

The Board rejects these excuses for Dr. Goldstein's criminal conduct. Dr. Goldstein may not at this point portray himself as a victim of his former employer or his workload when such claims were not part of the facts in the plea agreement and criminal information. If this were a viable defense to the charges, it should have, and undoubtedly would have been raised in the criminal court.

The Board declines to consider any of the mitigating statements in the documents submitted by Dr. Goldstein. *See* COMAR 10.32.02.04 E (2)(d). Under Maryland case law, Dr. Goldstein "may not now attack the factual underpinnings of his conviction." *Klauber*, 289 Md. at 459. In any case, his claim contradicts his guilty plea, and the Board will not consider it. *See Attorney Griev. Comm'n v. Sabghir*, 350 Md. 67 (1998).

In Dr. Goldstein's case, the Board concludes that the automatic revocation procedures of the Medical Practice Act apply and the Board is mandated to impose revocation of his medical license. H.O. § 14-404(b)(2).

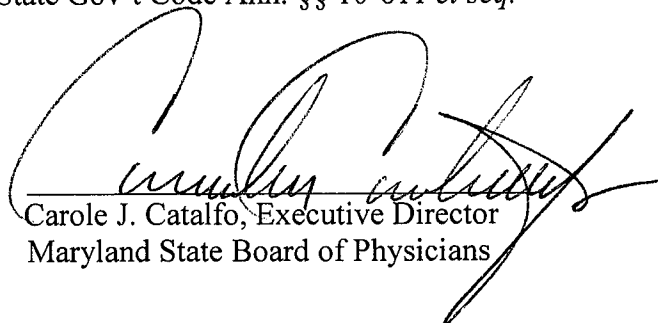
**ORDER**

It is hereby:

**ORDERED** that the license of Howard R. Goldstein, M.D., license number D69728, to practice medicine in the State of Maryland, is hereby **REVOKED** as mandated by Md. Code Ann., Health Occ. § 14-404 (b)(2); and it is further

**ORDERED** that this is a Final 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.*

9-28-12  
Date

  
Carole J. Catalfo, Executive Director  
Maryland State Board of Physicians

**NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Md. Code Ann., Health Occ. § 14-408(b), Dr. Goldstein has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Goldstein files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians  
Christine A. Farrelly, Deputy Director, Compliance and Licensure  
4201 Patterson Avenue  
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Noreen M. Rubin  
Assistant Attorney General  
Department of Health and Mental Hygiene  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**